

**MINUTES
URBAN COUNTY PLANNING COMMISSION
ZONING ITEMS PUBLIC HEARING**

June 27, 2013

- I. **CALL TO ORDER** – The meeting was called to order at 1:34 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Will Berkley; Carla Blanton; Mike Cravens; Karen Mundy; Mike Owens, Chair; Frank Penn; Carolyn Plumlee; and Bill Wilson. Absent were Patrick Brewer and Lynn Roche-Phillips.

Planning staff members present: Chris King, Director; Bill Sallee; Max Conyers; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Hillard Newman, Division of Engineering; Tim Queary, Urban Forester; and Captain Charles Bowen, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Ms. Plumlee, and carried 9-0 (Brewer and Roche-Phillips absent) to approve the minutes of the May 23, 2013, Planning Commission meeting.

III. POSTPONEMENTS AND WITHDRAWALS

1. DP 2013-6: SAMS PROPERTY (AMD) (6/13/13)* - located at 2640 Spurr Road.
(Council District 2) **(Strand & Associates)**

Note: The Planning Commission postponed this plan at their February 14, 2013; March 14, 2013; April 11, 2013; May 9, 2013; and June 13, 2013, meetings. The purpose of this amendment is to add two industrial buildings.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the proposed uses, sanitary sewer service and the need for tree protection areas and improvements to Greendale Road and Spurr Road.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire, Water Control Office's approval of the location of fire hydrant(s), fire department connections and fire service features locations.
10. Division of Waste Management's approval of refuse collection.
11. Kentucky Transportation Cabinet's approval of the access to Greendale Road.
12. Denote tree protection areas.
13. Addition of owner/developer information.
14. Revise contour information (2' contours).
15. Denote construction access location.
16. Denote building heights.
17. Addition of proposed easements.
18. Denote septic drain field location for Lot 1 on plan.
19. Discuss reciprocal parking and access for new buildings.
20. Discuss proposed access nearest to railroad crossing.
21. Discuss parking and pavement conflict with existing tree areas along railroad lines.
22. Discuss possible improvements to Greendale Road and Spurr Road.
23. Discuss proposed uses and amount of pavement on Lots 2 and 3.
24. Discuss development of Lots 2 and 3 relative to timing of sanitary sewer service.

Staff Comments: Mr. Martin stated that the staff had received a request from the applicant to withdraw this plan.

Action: A motion was made by Mr. Penn, seconded by Ms. Beatty, and carried 9-0 (Brewer and Roche-Phillips absent) to withdraw DP 2013-6, per the applicant's request.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, June 6, 2013, at 8:30 a.m. The meeting was attended by Commission members: Mike Owens, Carolyn Plumlee, Frank Penn, Eunice Beatty and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering and Casey Kaucher, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Denice Bullock, Dave Jarman and Cheryl Gallt, as well as Tracy Jones, Department of Law. The Committee made recommendations on plans as noted.

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General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, June 6, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. 562 SHORT STREET, LLC, ZONING MAP AMENDMENT & 562 SHORT STREET, LLC, ZONING DEVELOPMENT PLAN

- a. MARV 2013-11: 562 SHORT STREET, LLC (6/30/13)* – petition for a zone map amendment from a High Density Apartment (R-4) zone to a Lexington Center Business (B-2B) zone, for 0.137 net (0.205 gross) acre, for property located at 562 West Short Street. A dimensional variance is also requested.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 1) recommends Downtown Mixed Use future land use for the subject property, as it is within the designated Downtown Master Plan (DTMP) Area. This area has an underlying recommendation of Medium Density Residential (MD) land use from the 2001 Comprehensive Plan. The petitioner has requested a Downtown Center Business (B-2B) zone in order to renovate the existing residential structure for commercial uses – possibly offices or retail shops.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommended: **Approval**, for the following reasons:

1. The requested Lexington Center Business (B-2B) zone is in agreement with the 2007 Comprehensive Plan and the *Downtown Masterplan*, for the following reasons:
 - a. The *Masterplan* identifies the west side of West Short Street as a mixed-use area that should be expanded to include a wider range of uses with the "goal of creating a vibrant active corridor connecting the surrounding neighborhoods."
 - b. The *Masterplan* calls for additional convenience retail and office uses in the Western Suburb precinct, which also includes part of Jefferson Street.
 - c. The proposed B-2B zone will allow a mixture of uses, including convenience retail and offices that are mostly appropriate in this urban environment.

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2. The 2012 Goals and Objectives of the Comprehensive Plan are supportive of historic preservation and context-sensitive adaptive reuse/redevelopment. The petitioner's proposal to renovate the existing 2-story residential structure and provide space for small retail or offices is aligned with such goals (Goals A.3.a., D.3.a., and D.3.c.).
3. This recommendation is made subject to approval and certification of ZDP 2013-44: 562 Short Street, LLC, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are proposed for the subject property via conditional zoning:

Prohibited Uses:

- a. Civic Center and convention facilities.
- b. Retail sale of plant, nursery or greenhouse products, or agricultural produce.
- c. Hotels or motels.
- d. Establishments for the display, rental or sale of automobiles, motorcycles, trucks, and boats.
- e. Amusement enterprises, such as circuses; carnivals; and horse or automobile racing.
- f. Outdoor live entertainment.

These restrictions are appropriate and necessary to ensure that any reuse of the property remains compatible in this established, historic neighborhood, given its location in such close proximity to existing dwellings.

b. REQUESTED VARIANCE

- a. Reduce the zone-to-zone perimeter screening requirements from 15 feet to 5 feet and eliminate the requirement for a 6-foot privacy fence or wall from the rear plane of the structure to the Short Street right-of-way.

The Zoning Committee **made no recommendation** on this request.

The Staff Recommends: **Approval** of the requested landscape variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, create a nuisance to the general public, nor alter the character of the general vicinity. The side lot lines of the subject property will be augmented with new landscaping material.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The granting of this variance will allow the applicant to adhere to the Division of Historic Preservation's Design Review Guidelines, while still providing landscape screening between this property and those it adjoins.
- c. The special circumstance that applies to the subject property, justifying the landscape variance, is its location between dwellings in one of the older local historic districts and an adjacent pay parking lot.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant because it would require the razing and relocation of part of the existing building, solely in order to comply with the 15' landscape screening requirements.
- e. The circumstances surrounding this request are not the direct result of actions taken by the applicant. The structure, fencing and lack of landscaping on this lot have existed in this fashion for decades.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property B-2B; otherwise, any Commission action of approval of this variance is null and void.
2. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
3. Prior to occupancy for any commercial use, the applicant shall obtain all applicable permits from State and local agencies, including the LFUCG Divisions of Building Inspection, Historic Preservation and Planning.
4. Trees, and other landscaping and/or shorter walls, shall be installed along this zoning boundary, in accordance with the requirements of the Division of Historic Preservation. This shall be accomplished prior to issuance of a Zoning Compliance Permit.

- c. ZDP 2013-44: 562 SHORT STREET, LLC (6/30/13)* - located at 562 West Short Street.
(EA Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-2B; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.

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7. Addition of building dimensions.
8. Clarify status of gravel and paved areas.
9. Denote proposed uses on plan.
10. Remove garage from plan.
11. Resolve zone-to-zone and vehicular use area screening and buffering.
12. Resolve adequacy of off-street parking for new use(s).

Citizen Comments: Bill Johnston, 645 West Short Street, stated that, as the president of the Western Suburb Neighborhood Association, he has had several conversations with the petitioner about this proposed rezoning. He said that the petitioner has agreed to the addition of a conditional zoning restriction to restrict bars and restaurants at this location. With that change, Mr. Johnston stated that he and the other members of the Western Suburb NA are now in agreement with this rezoning request.

Staff Comment: Mr. Sallee stated that this matter could then be considered in an abbreviated hearing.

Zoning Presentation: Ms. Wade entered into the record several opposition emails that the staff had received from individuals in the neighborhood prior to the Planning Commission's May meeting, when this request was postponed. Mr. Johnston has since submitted a letter indicating their support for this request, and the staff has received a letter of support from the Bluegrass Trust for Historic Preservation, as well.

Ms. Wade stated that the subject property is located on the west side of West Short Street, and is surrounded on three sides by R-4 zoning. Referring to an aerial photograph of the area on the overhead projector, she noted an adjacent church property, as well as a property to the rear that is currently zoned B-2B. Also in the immediate vicinity are the Opera House Square townhouses and other residential uses along Short Street up to its intersection with Jefferson Street. Ms. Wade said that there is currently a house located on the subject property, which has been used for multiple purposes in the past. The petitioner is proposing to re-use the existing structure, which is included in the Historic Western Suburb H-1 overlay zone, for a commercial or office use. A detached garage has been removed from the rear of the property, and the petitioner is proposing to use that space to construct three parking spaces. Ms. Wade displayed a photograph of the subject property, noting the existing structure and the area of the demolition of the garage.

Ms. Wade stated that the 2007 Comprehensive Plan recommends Downtown Master Plan (DTMP) land use. The Comprehensive Plan notes that redevelopment recommendations for this land use category are included in the DTMP itself; should the DTMP not be implemented in an area, the Commission should consider the 2001 Comprehensive Plan's Land Use element when evaluating a rezoning request. Ms. Wade said that the 2001 Comprehensive Plan recommends Medium Density land use for the subject property. The DTMP identifies the subject property as part of the Western Suburb, which is recommended for some infill and redevelopment, but the DTMP does not indicate which zones would be most appropriate to accomplish that redevelopment. The DTMP calls for additional Convenience, Retail, and Office uses in the area, which includes Jefferson Street. It identifies the west side of West Short Street as a mixed-use area that should be expanded to include a wider range of uses, with the goal of creating a vibrant, active corridor connecting the existing surrounding neighborhoods.

Ms. Wade stated that the petitioner contends that the existing H-1 overlay zone provides some protection for the neighborhood, since any exterior changes to the subject property will need to be approved by the Board of Architectural Review. The petitioner also contends that the 2012 Comprehensive Plan Goals and Objectives are supportive of this type of redevelopment, particularly by providing adaptive reuse that is context and design sensitive; protecting and enhancing the cultural landscape that makes the Western Suburb neighborhood unique; and affecting further historic preservation efforts within that community. Ms. Wade stated that the staff opined, based on the DTMP recommendation and the Goals and Objectives, that more flexibility is suggested within the areas identified for mixed use, and the B-2B zone can achieve that flexibility. Since the Zoning Committee meeting three weeks ago, the petitioner has met with members of the neighborhood association, who were concerned that restaurants, cocktail lounges, and nightclubs could occupy this location. The petitioner has volunteered to prohibit those uses, in addition to the conditional zoning restrictions recommended by staff.

Ms. Wade said that the staff and the Zoning Committee are recommending approval of this request, with conditional zoning restrictions as recommended by the staff, and the additional restrictions as recently proposed by the petitioner for restaurants, cocktail lounges, and nightclubs.

Development Plan Presentation: Mr. Martin presented the corollary final development plan, noting that the staff had distributed revised conditions for approval prior to the start of the hearing on this item. He said that the development plan depicts the existing structure on the property, with a driveway and three parking spaces to be constructed at the rear of the property at the location of an existing garage, which is proposed to be removed. Mr. Martin stated that the staff is recommending approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property B-2B; otherwise, any Commission action of approval is

- null and void.
- 2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
- 4. Building Inspection's approval of landscaping and landscape buffers.
- 5. Urban Forester's approval of tree inventory map.
- 6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Addition of building dimensions.~~
- ~~8. Clarify status of gravel and paved areas.~~
- ~~7.9. Denote proposed uses on plan.~~
- ~~10. Remove garage from plan.~~
- ~~8.11. Resolve zone-to-zone and vehicular use area screening and buffering.~~
- ~~12. Resolve adequacy of off-street parking for new use(s).~~

The Subdivision Committee is also recommending approval of this plan. Mr. Martin stated that the conditions include denoting the proposed use of the property, and resolving the zone-to-zone and vehicular use area screening and buffering. Mr. Martin explained that, since the site is existing and developed, there was some concern about the buffering along the perimeter of the property, which will need to be resolved prior to certification of the plan.

Variance Presentation: Mr. Sallee presented the staff's variance report. Referring to an aerial photograph of the subject property, he said that, if the subject property is rezoned to B-2B, zone-to-zone screening will be required on each side property line. The subject lot is just over 65 feet in width, and the Ordinance requires a 15-foot landscape buffer where a business zone adjoins a residential zone. That buffer may be reduced to five feet when, in conjunction with the buffer, a six-foot tall or higher fence, wall, or earth mound is also constructed. Mr. Sallee said that the existing dwelling on the subject property is closer to the property line than five feet; in addition, the staff questioned the necessity of separating the vehicular use area, which is to serve the parking spaces, and the existing parking lot. The staff referred the petitioner to the Division of Historic Preservation, since the property is also in the Western Suburb Historic District. Upon consultation with the Historic Preservation staff, it was discovered that a six-foot-high fence between this structure and the adjoining residence, as well as between the driveway and the parking lot, would not likely meet the adopted Historic Preservation guidelines; that realization was the impetus for this request to the Planning Commission.

Mr. Sallee stated that the staff and the Landscape Review Committee have reviewed this request. The Committee did not have a quorum at that meeting, and the two members (of five) who were present did not agree on whether or not this variance should be granted. The staff believes that that the variance is justifiable, given that the subject property is located in an historic district; there is not sufficient minimum space to have a five-foot buffer; and six-foot fences are not typically constructed between residential structures in an historic district. Mr. Sallee stated that the staff is therefore recommending approval of the requested variances, for the reasons as listed in the staff report and on the agenda; knowing that the petitioner intends to plant trees along the landscape buffer, possibly along with other landscape material, which would need to be approved by the BOAR.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the conditional zoning restrictions. Mr. Kahly asked, with regard to condition #7, if the plan notes should include all of the allowable B-2B uses that were not included in the conditional zoning restrictions. Mr. Martin answered that, if the petitioner denotes the conditional zoning restrictions on the plan, the allowable uses would be implied.

Citizen Comments: No other citizens were present to speak to this request.

Zoning Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Roche-Phillips absent) to approve MARV 2013-11, for the reasons provided by staff, subject to the conditional zoning restrictions as recommended by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Roche-Phillips absent) to approve the requested variances, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 9-0 (Brewer and Roche-Phillips absent) to approve ZDP 2013-44, subject to the eight conditions as listed in the revised staff recommendation.

2. BAYER PROPERTIES, LLC, (AMD. #2) ZONING MAP AMENDMENT & FRITZ FARM, LLC (SUMMIT LEXINGTON – BAYER PROPERTY) ZONING DEVELOPMENT PLAN

- a. MARV 2013-7: BAYER PROPERTIES, LLC (AMD. #2) (6/27/13)* - an amended petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Mixed-Use Community (MU-3) zone, for 49.17 net (54.73 gross) acres;

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and from a Single Family Residential (R-1D) zone to a Mixed-Use Community (MU-3) zone, for 0.65 net (0.82 gross) acre, for property located at 4100 Nicholasville Road and 104, 108, and 112 East Tiverton Way. Dimensional variances are also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The *South Nicholasville Road Small Area Plan*, adopted in 2009 as an amendment to the 2007 Comprehensive Plan, recommends a mixed-use development (MU) of the subject property for both commercial and residential purposes. This Small Area Plan recommends that a storm water study also be conducted prior to any new development; that only residential structures be constructed to buffer existing residential uses within Subarea IV; and that non-residential structures be placed at the intersection of Nicholasville Road and Man o' War Boulevard and along Nicholasville Road to buffer noise. The applicant proposes an entertainment mixed-use development of slightly less than 800,000 square feet, with retail and residential uses within mixed-use buildings and a hotel on the site.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff, revising the staff's proposed conditional zoning restriction to delete the word "zone" and replace it with "use."

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Mixed-Use Community (MU-3) zone is in agreement with the 2007 Comprehensive Plan, and as amended by the *South Nicholasville Road Small Area Plan*, which was adopted by the Planning Commission in 2009, for the following reasons:
 - a. The *South Nicholasville Road Small Area Plan* encourages mixed use in a village-style development, with an emphasis on pedestrian, bike, and transit-oriented design. The proposed development does so.
 - b. Subarea IV of the *South Nicholasville Road Small Area Plan* recommends:
 - i. Mixed Use (MU) future land use for a majority of the subject property, and High Density Residential (HD) for the three parcels along Tiverton Way.
 - ii. A storm water study for 4100 Nicholasville Road and surrounding properties should be conducted.
 - iii. Constructing residential only structures as a buffer to existing residential uses adjacent to the subject property.
 - iv. Placing non-residential structures at the intersection of Nicholasville Road and Man o' War Boulevard and along Nicholasville Road to buffer noise.
 - c. The requested MU-3 zone meets the locational criteria as established by Article 28 of the Zoning Ordinance for street frontage of at least 160 feet along Nicholasville Road and Man o' War Boulevard, being at least three acres in size and being located within an area recommended for Mixed Use by the Comprehensive Plan, or its adopted amendment.
 - d. This proposed development will implement the vision and direction of the Small Area Plan to create a mixed-use development that places commercial-only structures along the arterial roadways, a village-style mixed-use area in the center of the property, and "residential-only" structures nearest the established neighborhood.
2. This recommendation is made subject to approval and certification of ZDP 2013-22: Fritz Farm, LLC (Summit Lexington, Bayer Property) prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be restricted as follows:
 - a. Within 75 feet of any single family residential zone, no commercial or business use shall be permitted.

This restriction is appropriate and necessary for the subject property in order to ensure that the proposed development is compatible with the neighboring land uses, as recommended by the *South Nicholasville Road Small Area Plan*, an adopted amendment of the 2007 Comprehensive Plan.

b. REQUESTED VARIANCES

1. Elimination of MU-3 dimensional requirement for 0-foot setback for 15% of front building walls.
2. A variance from the MU-3 1:1 height-to-yard ratio to allow a maximum height of 30' with a 15' side yard for Building "D".
3. A variance from the MU-3 1:1 height-to-yard ratio to allow a maximum height of 58' with a 50' side yard for Buildings "FF" & "GG".

The Staff Recommended: **Postponement of the height-to-yard variance for buildings "FF" & "GG" (#3)**, for the following reason:

- a. Additional time is needed to further analyze the impact, if any, of the requested variance on the nearby residential properties.

The Staff Recommended: **Approval of the elimination of the 0-foot setback (#1) and height-to-yard variance for building "D" (#2)**, for the following reasons:

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- a. Granting the requested variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The setback variances will be in keeping with pedestrian-friendly principles described in the Zoning Ordinance.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance because the overall development of this mixed-use center will utilize a pedestrian-oriented "New Urban-style mixed-use entertainment project" oriented to an internal street system rather than to arterials on the periphery.
- c. The special circumstances that apply to this property that do not generally apply to land in other MU-3 zones or the general vicinity are that the property is bounded on two sides by major arterial roads, and it is trifurcated by a major overhead utility easement and existing storm water drainage courses.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because a private internal road system is being proposed that will allow the development to achieve the design requirements of the MU-3 zone in place of the public roads on the perimeter of the development.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant taken subsequent to the adoption of the Zoning Ordinance; but are, rather, a design response to the difficulties of preparing this constrained site for a major mixed-use development.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval of this variance is null and void.
 2. Should the property be rezoned, it shall be developed in accordance with a future Final Development Plan approved by the Commission, or as a later Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
 3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
- c. ZDP 2013-22: FRITZ FARM, LLC (SUMMIT LEXINGTON, BAYER PROPERTY) (6/27/13)* - located at 4100 Nicholasville Road. **(HDR)**

The Subdivision Committee Recommended: **Postponement**. There were questions regarding the proposed access points, the proposed development in the southeast area of the property and compliance with Article 12 information.

The Staff Recommends: **Postponement**. There are questions regarding the proposed access points, the variances requested and the clarity of the site statistics.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Remove extraneous general notes.
8. Denote proposed building heights in feet.
9. Denote that compliance with Article 28-6 (b) through (g) shall be determined at the time of the final development plan.
10. Clarify amount of parking proposed in parking structures.
11. Denote number of bedrooms per dwelling unit.
12. Clarify required off-street parking per dwelling unit ~~or~~ and overall.
13. Provided the Planning Commission makes a finding in compliance with Art. 28-5(h)(6) of the Zoning Ordinance.
14. Denote construction access location(s).
15. Clarify site statistics to demonstrate F.A.R., lot coverage and open space.
16. Discuss variances requested.
17. Correct note #5.
18. Delete MU-3 ordinance requirements from plan.
19. Clarify proposed retail and residential square footage.
20. Correct tree canopy information.
21. Discuss building and parking lot orientation to arterial streets.
22. Discuss proposed access and potential road improvements.

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Staff Presentation: Ms. Wade began the staff's presentation by entering into the record the South Nicholasville Road Small Area Plan, as well as 10 letters in opposition to this request, which she distributed to the Commission members for their review.

Ms. Wade briefly oriented the Commission members to the location of the subject property at the northeast corner of Nicholasville Road and Man o' War Boulevard, noting that the subject property also has frontage along Habersham Drive, which is approximately 2,200 feet to the west of that intersection, as well as along East Tiverton Way. She said that the property, which is commonly known as the Fritz Farm, has been zoned A-U for approximately 45 years. There have been several attempts to rezone the property, but all have proven unsuccessful, even after being litigated. There is an existing conditional use permit for a plant nursery and garden center, which was approved by the Board of Adjustment in 2001. Referring to an aerial photograph of the subject property, Ms. Wade noted that the bulk of the property is not being used in an urban, developed fashion; she also pointed out the location of the garden center and the existing residence on the property. She displayed the following street-level photographs: 1) a view of the East Tiverton Way frontage from the Fritz property, looking toward Nicholasville Road; 2) from the same vantage point, a view of Devondale Baptist Church to the east; 3) a view of an existing stub street from East Tiverton Way into the Fritz property; 4) a view of the Fritz property from Habersham Drive, noting the slight grade difference in that location; 5) a view of Man o' War Boulevard, looking in the direction of Harrodsburg Road; 6) a view of Nicholasville Road, in front of the entrance to the plant nursery, looking toward the intersection of Nicholasville Road and Man o' War Boulevard; 7) the existing garden center and plant nursery; and 8) the Fritz family farmhouse, which is set back some distance from Nicholasville Road.

Ms. Wade stated that the petitioner originally requested a rezoning to B-6P for the subject property. The map request was then amended to a mixture of zones, including: B-6P, R-5, B-3, and MU-3. There were concerns among the staff about that request, so the petitioner amended the request again, and is now requesting only an MU-3 zone. The development plan proposes a hotel use above retail uses; some mixed-use structures; and some structures solely for residential and commercial uses. Ms. Wade said that, for many years, the Comprehensive Plan has recommended a mixture of Medium Density and High Density Residential use for the property, which is also depicted on the 2007 Comprehensive Plan land use map. The Comprehensive Plan also recommended a study for a 1.5-mile corridor south to the Jessamine County line in order to assess the large amount of vacant property in this area of the county. The result of that study was the *South Nicholasville Road Small Area Plan*, which the staff evaluated in assessing this proposed zone change.

Ms. Wade stated that the *South Nicholasville Road Small Area Plan* (SAP) encourages mixed use in a village-style development, with emphasis on pedestrian, bike, and transit-oriented design for the subject property. The SAP also recommended mixed use for the Fritz Farm property, and High Density Residential use for the three small lots on East Tiverton Way that are included in this request. The SAP recommended the construction of residential-only units to act as a buffer to existing residences adjacent to the subject property; and the placement of non-residential structures at the intersection of Nicholasville Road and Man o' War Boulevard, and along the Nicholasville Road frontage, to buffer noise for the existing neighborhoods. Also included in the SAP recommendations was a stormwater study for the Fritz Farm and surrounding properties. Ms. Wade said that, as part of the SAP process, the staff prepared a concept plan, known as the Fritz Village Concept, which broke possible land uses down into residential-only for 16% of the development; non-residential structures, for 45% of the development; and a mixture of uses for about 38% of the development. The staff was pleased when the petitioner amended their application a second time in order to request the MU-3 zone, because they believe it can more fully implement the SAP recommendations.

Ms. Wade said that the petitioner is now proposing just over a million square feet of retail, residential, and hotel uses on the subject property, which is very much in line with the Fritz Village Concept with regard to the percentages for each type of use. The petitioner's development plan is now depicting non-residential uses along the two arterial frontages, for approximately 30% of the total floor area; residential uses adjacent to the Devondale subdivision, for approximately 25% of the floor area; and a mixed-use development, much like the Fritz Village, toward the center of the property, encompassing approximately 46% of the total floor area. Ms. Wade explained that the mixed-use area is proposed to flank the public open space, which could allow for entertainment opportunities such as live music, public gatherings, and special events. This element is of particular importance, since the petitioner is requesting the entertainment component of the mixed-use zone as well. Of the total square footage proposed for the site, slightly over half would be devoted to commercial purposes. Ms. Wade stated that the staff report mentions that Article 28 of the Zoning Ordinance, which regulates the mixed-use zones, outlines locational criteria for a mixed-use project. The petitioner's plan currently meets all of the locational criteria, which makes it eligible for the mixed-use zone. Ms. Wade noted that the staff was concerned that no residential uses were proposed along the Tangleway stub street, which was recommended for residential use by the SAP; but they have since learned that the petitioner is proposing to allow that area to remain as open space. The staff believes that a landscaped open space is an equally appropriate buffer between the commercial use proposed along Man o' War Boulevard and the residential uses on Tangleway Way.

Ms. Wade stated that the staff is suggesting one conditional zoning restriction for the subject property, to prohibit commercial development within 75 feet of any single family residential use in the Devondale subdivision. The staff believes that that restriction will help to further the SAP recommendation of locating the commercial development fur-

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ther away from single family residential areas. The staff originally suggested that that distance be from a residential zone; the petitioner requested a change in the language from "zone" to "use," because the Devondale Baptist Church is located in a residential zone, but it is not a residential use. Ms. Wade said that the SAP recommended that a stormwater study be completed for the subject property prior to any development. The petitioner has completed that study, and is currently working with the Division of Water Quality to address the issues raised, not just for their site, but for the adjoining neighborhood. Ms. Wade stated that the staff and the Zoning Committee are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, noting that revised conditions had been distributed to the Commission members prior to the start of the hearing. He noted that, since this plan is preliminary, the Commission will also review a final development plan for the property prior to any development, should the rezoning request be approved.

Referring to a rendered development plan, Mr. Martin oriented the Commission to the subject property, noting the Nicholasville Road, East Tiverton Way, Man o' War Boulevard, and Habersham Road frontages, as well as the Tangley Way stub street. The petitioner is proposing to use that Tangley Way stub a pedestrian-only an access; to construct full accesses on Nicholasville Road and East Tiverton Way; and to construct a right-in/right-out access to Man o' War Boulevard.

Mr. Martin explained that the petitioner is proposing to construct one-story buildings along the perimeter of the property. Some of the structures are proposed for residential use only, with some of the others having residential above commercial uses. The hotel building is proposed to be five stories in height, and it will also contain a mixture of uses. In order to provide parking for the development, the petitioner is proposing three parking structures, along with some surface parking spaces, for a total of 2,477 spaces. The proposed number of parking spaces exceeds the Zoning Ordinance requirement by just over 300 spaces. Mr. Martin stated that the total proposed square footage for the property is over one million square feet, with floor area ratio and lot coverage slightly less than what is allowed by the Zoning Ordinance. There are 400 proposed residential units, with 620 bedrooms in one-, two-, and three-bedroom units.

Mr. Martin stated that the petitioner is proposing to construct a large detention basin on the site. A stormwater study has been completed for the property, and has resulted in various recommendations, the primary recommendation being the construction of a detention basin on the site, which will help to alleviate the downstream stormwater issues.

Mr. Martin stated that the staff is recommending approval of this revised plan, subject to the following conditions:

The Staff Recommends: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property MU-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Remove extraneous general notes #10, 12, 14, 15, 17 & 18.
- ~~8. Denote proposed building heights in feet.~~
- ~~8. 9.~~ Denote that compliance with Article 28-6 (b) through (g) shall be determined at the time of the final development plan.
- ~~9. 10.~~ ~~Clarify amount of parking proposed in parking structures~~ Remove hotel square footage from the residential floor area and place in site statistics.
- ~~11. Denote number of bedrooms per dwelling unit.~~
- ~~12. Clarify required off-street parking per dwelling unit or and overall.~~
- ~~10. 13.~~ Provided the Planning Commission makes a finding in compliance with Art. 28-5(h)(6) of the Zoning Ordinance.
- ~~14. Denote construction access location(s).~~
- ~~11. 15.~~ Clarify Denote in the site statistics to demonstrate F.A.R., lot coverage and the proposed open space.
- ~~12. 16.~~ Discuss Provided the Planning Commission approves the variances requested.
- ~~17. Correct note #5.~~
- ~~13. 18.~~ Delete MU-3 ordinance requirements from plan.
- ~~19. Clarify proposed retail and residential square footage.~~
- ~~20. Correct tree canopy information.~~
- ~~14. 21.~~ Discuss Denote that building and parking lot orientation to arterial streets will be determined at the time of Final Development Plan.
- ~~15. 22.~~ Discuss Resolve proposed construction access and potential road improvements at the time of Final Development Plan.

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With regard to condition #8, Mr. Martin said that the articles referenced, which are included in all of the mixed-use zones, regulate facades; building features; parking; pedestrian facilities; lighting; and other issues. These conditions are typically required to be met at the time of a Final Development Plan for the property, and they can be addressed at that time. Condition #11 would require that the petitioner denote the amount of open space on the plan. The staff believes that, given the size of the proposed development and the large detention basin, there might be some question about the ability to meet the required open space at the time of a Final Development Plan. The staff is recommending this condition to ensure that the issue is addressed at that time. With regard to condition #14, Mr. Martin stated that the staff believes that it is important to address the "face" that will be presented to the arterial roadways surrounding the proposed development, with an emphasis on placing front facades toward Nicholasville Road and Man o' War Boulevard. It appears that the petitioner is currently proposing to orient those structures internally, so the staff is recommending this condition to address the issue at the time of the Final Development Plan. Condition #15 refers to the proposed accesses and potential road improvements that might be necessary for the proposed development. Mr. Martin stated that there are spacing and design issues that should be addressed for the Man o' War Boulevard and Nicholasville Road accesses, as well as the proposed East Tiverton Way access point. He said that the staff recognizes the importance of those accesses and the level of improvements that might be necessary, but those issues can all be adequately addressed at the Final Development Plan stage.

Mr. Martin stated that the Zoning Ordinance requires that the Planning Commission make a finding for the proposed MU-3 zone, copies of which were distributed to the Commission members prior to the start of this hearing. The staff finds that, based on the subject property's location; its size, which is over 10 acres; and the fact that there are existing commercial and multi-family developments in the vicinity, the property does meet the locational criteria as required by the Ordinance.

Commission Questions: Mr. Wilson asked if the access point on Habersham Drive is proposed to be a full access, or right-in/right-out. Mr. Martin answered that it is proposed to be a full access point.

Ms. Blanton stated that the Zoning Committee heard concerns from some of the residents on Fox Harbour Drive at their meeting. She asked if the road improvements covered by condition #15 would include any relief for those residents in order for them to easily access Habersham Drive. Mr. Martin responded that those improvements should mitigate traffic concerns for the Fox Harbour residents as well. He noted that the staff has already had discussions with the Division of Traffic Engineering about appropriate traffic calming for the entire area.

Ms. Mundy asked, with regard to the proposed detention basin, if it would hold water only in wet weather. Mr. Martin answered that the basin will hold water during rainfall events, and would then release it slowly.

Mr. Owens asked if the blue outline around the detention basin indicated a proposed trail. Mr. Martin responded that that line on the rendering indicates the outline of the proposed basin. Mr. Owens asked how much total frontage the subject property has on Man o' War Boulevard. Mr. Martin answered that that frontage is just over 2,200 feet. Mr. Owens said that the SAP recommended that a stormwater study be done for the subject property, and he asked if that study had been completed. Mr. Martin answered that the study had been done, and submitted to the Division of Water Quality.

Ms. Plumlee asked if the petitioner is proposing to add bike racks throughout the development. Mr. Martin responded that bike racks are proposed. He added that bicycle and pedestrian requirements are inherent in the MU-3 zone, and the petitioner will have to be in compliance with those requirements at the time of a Final Development Plan for the property.

Variance Presentation: Mr. Emmons presented the staff's report on the three requested variances, noting that the staff had originally recommended postponement for one of those variances. The staff supplied a supplemental report to the Commission to address that requested variance; should the Commission agree with the staff, their findings should include both staff reports.

Mr. Emmons stated that the first requested variance is to a requirement of the MU-3 zone that 15% of the building wall frontage along the public street would have to be at a 0' setback. The petitioner has requested the elimination of this requirement, since it would result in the buildings on Nicholasville Road and Man o' War Boulevard being constructed right at the right-of-way line. The petitioner is proposing to construct an internal circulation system of private streets, and they would prefer to meet this requirement of the Zoning Ordinance along those streets, rather than the adjacent arterials. Mr. Emmons said that the staff believes that the petitioner's proposal meets the intent of the Ordinance to bring pedestrian activities closer to the streets. He added that construction of the buildings at the right-of-way line at the intersection of two major arterials could prevent the widening of Nicholasville Road and/or Man o' War Boulevard in the future. The staff was aware, at the time the Zoning Ordinance was amended to allow mixed-use projects outside of New Circle Road, that proposals would need to be evaluated on a case-by-case basis in order to review the suitability of this requirement for each MU-3 zone change.

Mr. Emmons stated that there is a 100-foot overhead utility easement on the subject property, which, along with several natural drainage areas, constrain development on the property. This constraint is the basis for the two remaining requested variances. Variance #2 is proposed for the setback requirement for building "D," which adjoins a residential zone for the property that is the location of the Devondale Baptist Church, and a vacant lot owned by the church. The typical setback in an MU-3 zone is ten feet, unless adjacent to a residentially-zoned property, in which case a 1:1 height-to-yard ratio is required. Mr. Emmons said that the utility easement, setback requirement, and location of the access point to East Tiverton Way together create a triangularly-shaped property, which greatly limits the developable area. The petitioner is requesting a setback variance that would allow a building 25 feet in height to be located 15 feet from the property line. Mr. Emmons stated that the staff is recommending approval of requested variance #2, because of the restrictions that the overhead utility easement and East Tiverton Way access place on the property.

Mr. Emmons said that variance request #3 refers to buildings "FF" and "GG," which are proposed to be residential-only structures, four stories in height, located at the rear of the property and oriented toward the internal street system. The staff originally recommended postponement of this variance, which initially requested that a building 58 feet in height could be located as close as 50 feet to the property line. Mr. Emmons stated that, in reviewing the revised development plan, the staff discovered that building "FF" is located 75 feet from the adjacent residentially-zoned property, and it is proposed to be 56 feet in height; so it is unnecessary to grant a variance for that building. Building "GG" is depicted as being between 50 and 55 feet from the property line, and the height of the building is proposed to be 56 feet. Mr. Emmons said that the staff believes that this proposed variance would result in building "GG" being non-compliant in relation to two residential properties on East Tiverton Way. The staff could not find that a 56' or 58' building would have a negative impact on the subject property, but the staff also could not find an appropriate justification for this requested variance. Mr. Emmons stated that a slight revision to either the building architecture or the placement of the building would make building "GG" compliant as well. He noted that, if this zone change is granted, there might be some changes to the development plan that could justify this variance in the future. So, at this time, the staff is recommending disapproval of requested variance #3, for the reasons as listed in the staff report and on the agenda.

Traffic Impact Study Presentation: Max Conyers, Transportation Planning, presented the staff's report on the Traffic Impact Study that was performed by the petitioner. He stated that mixed-use developments typically have reduced trip numbers by their nature, since the mixture of uses on the site can reduce the number of times a driver has to leave the area.

Mr. Conyers stated that the full build-out of the development is anticipated to occur by 2015. The many access points proposed are a positive for the development from a trip-distribution standpoint, as they will help traffic filter out through several points, rather than converge on one or two single accesses. Nicholasville Road, as a segment of US 27, is recognized as one of the country's principal arterial highways. Man o' War Boulevard is considered a minor arterial roadway; it does not connect regionally, but serves an important function locally in connecting several major arterials. Mr. Conyers stated that the average daily trips (ADT) to the subject property (as calculated according to the Institute of Traffic Engineers Handbook) are predicted to be in excess of 20,000 per day. The PM peak hour is typically the most congested time of the day; 2,134 trips, or approximately 10% of the daily traffic, are predicted during that time. During the AM peak hour, 711 total trips are predicted.

Mr. Conyers said that, in evaluating a development such as the one proposed, it is important to consider the trip distribution data as well as average daily trips. The consultant's traffic study indicated that 36% of the trips will be from the north; 24% from the south; and 20% evenly divided between east and west. He said that not all of those trips are projected to be new to the area. The percentage of "pass-by" trips, or drivers who would normally be passing the development who decide to stop in, could be as high as 25%, as well.

With regard to the roadway capacity and intersection levels of service (LOS), Mr. Conyers said that construction of the proposed development is projected to slightly increase the traffic delay per vehicle at each intersection, and some of the "minor movements," such as right-hand turns, could be severely increased. The overall levels of service, however, are projected to remain the same, with the exception of the Man o' War Boulevard/Habersham Drive/Victoria Way intersection, which went from LOS "B" to "C."

Mr. Conyers stated that the vicinity of the subject property is very important in terms of overall regional transit, and it is expected to grow exponentially in the projections for 2020 and beyond. In order to help mitigate the effects of the proposed development, the petitioner is proposing to construct an additional northbound through lane from Toronto Drive, just south of Man o' War Boulevard, to East Tiverton Way. This additional lane could help to prevent the "bottleneck effect" at the East Tiverton/Nicholasville intersection, where a variable lane system was also installed within the past two years. Mr. Conyers stated that the staff's conclusion is that the petitioner's traffic impact study meets the requirements of Article 6 of the Zoning Ordinance. In addition, the bicycle/pedestrian planners have evaluated the study and the proposed development, and they believe that it will provide good bike and pedestrian connectivity. Transportation Planning staff have also attended a recent meeting with the petitioner and representatives of LexTran.

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As part of an ongoing Transit Alternatives Analysis for US 27, Lexington-Fayette County could possibly be eligible for grant funds for a "bus rapid transit" program which could include the proposed development. In addition, Mr. Conyers said that the staff was pleased with the petitioner's commitment to designing a transit-oriented development.

Commission Question: Mr. Penn asked if the additional lane to which Mr. Conyers referred would be on Nicholasville Road; and, if so, how far north it would extend. Mr. Conyers answered that it would be on Nicholasville Road, and that it would merge into the existing lanes just past the new entrance to the proposed development.

Petitioner Presentation: Bill Lear, attorney, was present representing the petitioner. He said that this proposed zone change has evolved as the petitioner has worked on the details with various government agencies. The petitioner has worked with LFUCG stormwater engineers; state and local transportation officials; and the Planning staff, among others. The original request was for a B-6P zone; after further conferring with staff, the petitioner amended their request for multiple zones, with the intent of achieving a New Urbanist-style development; but it would have required many variances. The staff advised the petitioner that the MU-3 zone with an entertainment designation might be more appropriate for the uses desired, and the petitioner then amended their request to the MU-3 zone.

Mr. Lear stated that the architects who designed the proposed development have designed several outstanding "life-style centers" throughout the south, including the Birkdale development, outside Charlotte, North Carolina. That development has parking garages, taller buildings, and other New Urbanist design features, all of which have helped create an outstanding project.

Mr. Lear said that the proposed development will provide maximum ingress and egress, with an improved transportation system in the immediate vicinity. Access to the property, including a new signalized intersection on Nicholasville Road, has received conceptual approval from the Kentucky Transportation Cabinet (KYTC) officials. The proposed right-in/right-out access to Man o' War Boulevard should help to remove traffic from the local streets. Mr. Lear said that the petitioner believes that this development will also help to provide a solution to a longstanding stormwater problem, with the construction of a large detention basin on the property. Should this project not go forward, LFUCG would be required to address those stormwater issues at some point, and the cost to provide a solution could be significant.

David Silverstein, Bayer Properties, stated that the petitioners have been working on this request for over two years. He said that the site provides several challenges: it has been proposed for rezoning several times, all of which have been contentious; it has significant drainage issues; and traffic in the vicinity is problematic. The petitioners engaged several local professionals, along with LFUCG staff, to address the various engineering, traffic, and design challenges on the site and develop a workable plan for the property. Mr. Silverstein said that the proposed development plan has been closely scrutinized, and the petitioners believe that it is in agreement with the recommendations of the South Nicholasville Road Small Area Plan. In addition, the petitioners have met with the adjoining neighborhood association, and attempted to address as many of their questions as possible.

Mr. Silverstein stated that his company, which is headquartered in Birmingham, Alabama, has developed projects similar to the proposed development all over the United States. He believes that their projects have enhanced the quality of life in each of the communities where they have located. The company began developing their first "Summit" project in 1994, at a time when most Birmingham shoppers traveled to Atlanta due to a lack of large-scale shopping centers in Birmingham. Mr. Silverstein displayed several photographs of similar "Summit" projects around the country, noting that their focus is on providing quality retail services, attractive hardscape, and a clean and attractive shopping environment. He said that his company also focuses on working with arts and charitable organizations in the cities where their developments are located, including hosting various performances and fundraisers in the shopping centers.

Referring to a large-scale, three-dimensional model of the proposed development, Mr. Silverstein said that the petitioner is proposing to create a pleasing "face" along the Nicholasville Road and Man o' War Boulevard frontages of the subject property, and to provide a sense of place. Bike racks are proposed throughout the development, as an enticement for people to live, work, and shop there.

With regard to the aforementioned stormwater issues in the vicinity of the subject property, Mr. Silverstein stated that the petitioner is cognizant of those problems, and is committed to solving them. The proposed detention area on the property will not be designed to retain water all the time, just during rainfall events, and it should help to control flooding in the nearby neighborhood as well.

Mr. Silverstein said that the petitioner also understands the need for an adequate buffer between the proposed development and the adjacent established neighborhood. He noted that the Summit development in Birmingham is located near enough to an existing residential neighborhood that the shopping center is included as an amenity in real estate listings, but the neighborhood is completely buffered from the development.

Mr. Silverstein stated that he has been traveling to Lexington for over 30 years, because he has many friends in the area. He said that his local friends have repeatedly stressed the importance of developing the subject property appropriately, since it is a prominent site that has been proposed for development before. Mr. Silverstein concluded by noting that the petitioner has worked well with the owners of the subject property; they "have not cut any corners" on the proposed design; and they believe the proposed development should be allowed to go forward.

Bruce Simpson, attorney, opined that the petitioner "is bringing a truly iconic development to the gateway of Lexington." He said that the proposed development is in compliance with all of the recommendations of the Comprehensive Plan and the *South Nicholasville Road Small Area Plan* (SAP). Their traffic study, which was originally filed in August of 2012, has been fully vetted; and an amended study was filed on May 23, 2013. Mr. Simpson noted that the opponents' traffic study, which was submitted at this hearing, has not been reviewed by staff. He said that the petitioner is proposing to develop the subject property at ½ the density recommended by the SAP. The petitioner contends, therefore, that the proposed development will result in a lesser increase in traffic volumes than some of the other possible uses that could locate there.

With regard to Mr. Owens' question about the stormwater study, Mr. Simpson stated that two such studies have been done for the subject property. Completion of those studies was required prior to the filing of this application for rezoning. The petitioner contends that their work on the proposed development will help to mitigate stormwater problems that have increased as the nearby neighborhoods have developed over the years. The stormwater studies confirm that one 36" line and one 48" line flow under Man o' War Boulevard and discharge stormwater to the subject property, in addition to an 18" line that brings water from the Wal-Mart property across Nicholasville Road. Mr. Simpson stated that the stormwater studies recommend that LFUCG condemn a portion of the subject property in order to create a regional detention basin, at a cost to the taxpayers of Lexington-Fayette County of nearly \$2 million. The petitioner's detention basin, which will incur no costs to taxpayers, will provide immediate relief to the adjoining neighborhoods that have been adversely impacted by stormwater for years. Mr. Simpson added that the stormwater studies recommended the demolition of four to nine houses in the vicinity, which might or might not be necessary following the construction of the detention basin on the proposed development.

Ben Edelen, HDR Engineers, stated, with regard to the concerns about traffic, that the petitioner's proposal to add a lane from south of Man o' War Boulevard to East Tiverton Way will create three full inbound lanes on Nicholasville Road, without additional use of the existing reversible lane system. The right-in/right-out access to Man o' War Boulevard, which is proposed to be located about midway along the Man o' War Boulevard, between the Nicholasville Road intersection and Habersham Drive, and will be further than the required 1,200' spacing between intersections. Mr. Edelen noted that, while the petitioner is not proposing a second Man o' War Boulevard access point, a different development plan for the property could have included two such accesses. He said that the petitioner has worked for over a year with the Kentucky Transportation Cabinet, and they have obtained a conditional letter of approval for the proposed Nicholasville Road access point.

With regard to the stormwater issues, Mr. Edelen stated that the petitioner's detention basin is proposed to be more than two times necessary for the size of the property. He noted that the petitioner will also be incurring additional costs for the construction of the basin, a portion of which will be constructed underneath one of the proposed parking garages. The petitioner has also been working with the staff of the Division of Water Quality with regard to the sanitary sewer system, and they are committing to upsizing the infrastructure in order to prevent the system becoming overburdened following the construction of the proposed development.

Commission Question: Mr. Penn asked if the petitioner factored in the need for possible widening of Nicholasville Road and/or Man o' War Boulevard in the future. Mr. Edelen answered that the traffic study did not consider possible widening; its data was calculated based on the full build-out of the proposed development in 2015, for which widening is not predicted to be needed. He added that LFUCG staff indicated that they were working with LexTran to increase transit service to the subject property, which should help to decrease traffic in the area.

Petitioner Presentation (cont.): Mr. Lear stated that the SAP process took more than a year to complete, including 11 meetings; three public meetings; two focus groups; an opinion survey; and a public hearing. The Steering Committee included Council members, neighborhood association representatives, and property owners, all of whom worked together to bring forward the mixed-use recommendation for the subject property. The development plan example included in the SAP entailed more than 2.6 million square feet of development; the proposed development includes approximately 1,045,000 square feet. Mr. Lear said that this recommendation for more intense development is part of Lexington-Fayette County's focus on "developing up, not out." The mixed-use recommendation is designed to provide more density and diversity; increased safety and social interactions; a better pedestrian experience; and a sense of place. The SAP recommendation does not include direct access to Man o' War Boulevard, but the petitioner believes that the proposed right-in/right-out is totally warranted, and not unprecedented.

Mr. Lear said that the proposed development would be an \$80-\$100 million project, which could have a huge economic impact in terms of construction, sales of goods and services, and additional employment. He said that the pe-

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petitioner had chosen to forego the presentation of their economic impact study, but they contend that the proposed development will provide an “idyllic setting” where residents can live, work, and play.

Commission Question: Mr. Berkley asked if he could request some additional time for the petitioner to present their economic impact study. Mr. Owens replied affirmatively.

John Farris, Commonwealth Economics, stated that his firm conducted an economic and fiscal impact study on the proposed development. He said that the proposed development is projected to have various types of major impacts on the local economy. First, during the construction phase, the projected economic impact could reach \$153 million. The construction could provide as many as 1,360 jobs, with wages totaling \$40 million. Once construction is complete, the proposed development could have \$128 million impact through restaurant and retail operations alone; \$55 million in total wages created; and support for 2,900 jobs. With regard to the possible fiscal impact, Mr. Farris said that the proposed development could generate \$5.3 million in incremental tax revenues and estimated taxes. The subject property is currently generating approximately \$562 in tax revenue as an agricultural property. Mr. Farris added that the current tax base is low because the property is zoned for agriculture, which has a special tax rate.

Note: Chairman Owens declared a recess at 3:26 p.m. The meeting reconvened at 3:33 p.m., with the same members in attendance.

Citizen Support: Jeff Stidham, Stidham Commercial Partners, noted that he has a vested interest in the proposed development. If one of the potential tenants he has referred to the petitioner is selected to locate there, he will earn a fee.

Mr. Stidham said that he believes that the Summit will be a world-class development, and that the city of Lexington is “lucky to have a project of this quality and scope developed here.” He added that providing opportunities for people to live, work, and shop in one area is a more efficient use of the land. Mr. Stidham also agreed with Mr. Silverstein’s assertion that property values around the proposed development will increase, since the area will become an important destination.

Mr. Stidham stated that his company recently represented the law firm of Bingham McCutcheon, which chose to locate its new headquarters in Lexington, creating 250 new jobs. He said that the firm was considering 300 cities during their search, but they chose Lexington because of its beauty, quality of life, educational opportunities, educated workforce, and shopping and dining facilities.

Mr. Stidham said that the proposed development will bring additional traffic to the area, but he believes that traffic congestion “is an indicator of the economic vitality of a city.” He stated that he believes that everyone has a vested interest in supporting a world-class development like the Summit.

Donald Brown, 2653 Our Native Lane, stated that he had leased property in Birmingham approximately two miles from the Summit development there. He said that he believes that Lexington-Fayette County would be very lucky to have a Summit development located here, since it has brought a lot of business to Birmingham and would likely do the same in Lexington. Mr. Brown asked that the Planning Commission vote in favor of this request.

John Bronaugh, 1212 Cape Cod Circle, stated that he is a commercial real estate broker and a longtime friend of John Fritz, whose family has owned the subject property for many years. He said that he and Mr. Fritz have discussed the property many times over the years, and he has observed the difficulties Mr. Fritz has had in attempting to rezone it. Mr. Bronaugh opined that he is happy that the petitioner has taken interest in the property and given Mr. Fritz an opportunity to make such a worthwhile contribution to the city.

Charles Hite, 929 Aurora Avenue, stated that he believes that the staff has worked hard on the issues involved with this request, and he is in favor of the proposed development. Mr. Hite opined that the subject property has remained vacant for too long, and he asked the Commission to vote in favor of this request.

Georgia Cruse, 1171 Kelsey Drive, stated that she is a commercial real estate inspector. She has inspected the Summit property in Louisville, and she believes that it is beautiful and impeccably maintained.

Hank Graddy, attorney, was present representing a group of nearby neighbors who object to this request. He said that his group has adopted the acronym “DONT” – for “Don’t Overload Nicholasville Road with More Traffic.” Mr. Graddy said that, while the petitioner might have been meeting for years with the staff, they did not meet with the neighbors until March of 2013. There were 75 residents present at that meeting, where they shared their concerns about the proposed development.

Mr. Graddy stated that the Summit might be an urban development, but “to call it a village, and say it complies with the SAP that recommends village-style development would be butchering the English language.” Mr. Graddy’s clients contend that the proposed development will have severe impacts on the residents who use Tiverton Way, Haber-

sham Drive, and Fox Harbour Drive to exit their neighborhoods. There has been an emphasis at this hearing on the importance of the economic potential of the proposed development, but Mr. Graddy's clients believe that their safety is important as well, and it should be given equal or greater weight. Mr. Graddy stated that his clients should be able to drive safely on public streets without increased risk of an auto accident. He said that Nicholasville Road is already the most dangerous street in Lexington-Fayette County, and the increased traffic from the proposed development will make it even more dangerous. Those neighbors believe that, if the Summit project is allowed to locate on the subject property, the density must be reduced, and the traffic aspects must be reconsidered; until those concessions are made, Mr. Graddy's clients request that the Planning Commission deny this application, or ask the petitioner to withdraw and modify the application to remove some parts of the development. He said that the following points could provide a basis on which the Commission could recommend disapproval of this request:

1. Mr. Graddy stated that his clients had hired a consultant to perform a traffic study, which they believe will demonstrate that the petitioner's Traffic Impact Study is incomplete and inadequate, in that it fails to address the "corridor impacts" of the proposed development. He asserted that the Traffic Impact Study addresses the issue of traffic "intersection by intersection in isolation," rather than holistically, and that it does not comply with the requirements of the Zoning Ordinance or the Kentucky Transportation Cabinet.
2. Mr. Graddy said that he believes that the Summit development, as proposed, could prevent the construction of a Single-Point Urban Interchange (SPUI) at the Man o' War Boulevard/Nicholasville Road interchange, which was one of the recommendations of the SAP.
3. Mr. Graddy stated that his clients believe that the density proposed on the subject property is too intense for this location. The property is very near Fayette Mall, which has 1.4 million square feet of building area on a nearly 100-acre property, or 14,000 square feet per acre. The proposed development, if constructed as depicted on the development plan, would be approximately 50,000 square feet of building per acre. Mr. Graddy said that would result in "the most intense development Fayette County has ever seen," on a property with severe constraints. While Fayette Mall has seven access points, none of which exit through residential neighborhoods, the subject property has frontage on several "severely limited roadways, including Tiverton Way and Habersham Drive." Mr. Graddy said that the subject property is much smaller than the Fayette Mall property, with exiting traffic which utilizes the public street system in the area, and yet it is being requested for a density far greater than that of Fayette Mall.
4. Mr. Graddy opined that the SAP contradicts itself; he said that one section refers to providing a transportation solution, but the concept plan ignores that solution. He added that his clients believe that the density numbers provided in the SAP concept plan were not intended to be a guide for the development of the subject property. They feel that the petitioner is misstating that Plan when he "hides behind" the 2.5 million square feet suggested, and "says it could be so much worse." Mr. Graddy said that he believes that "it cannot get much worse," than the density of the proposed development, since "every inch of the property will be paved." With regard to the storm-water plan to which the petitioner has referred, Mr. Graddy said that he and his clients have not yet seen that plan; but no evidence has been presented to indicate that the petitioner will develop the property with green infrastructure techniques, as recommended by the Comprehensive Plan.
5. Mr. Graddy stated that his clients have suggested changes to the development plan that could mitigate the impact of the development on their neighborhoods; make the development more compatible with the SAP; and make it a project that the neighbors could support. The neighbors are requesting that the petitioner not develop the two buildings next to Habersham Drive; move the buildings back from the Man o' War Boulevard/Nicholasville Road intersection, in order to allow room to build the SPUI; and remove the residential buildings "FF" and "GG" from the plan. Those changes would serve to reduce the density on the property and provide some relief for the traffic congestion in the area, while leaving the "core" of the proposed development intact.

Mr. Graddy stated that his clients believe that the proposed development would be too dense "even if Nicholasville Road were flowing freely." He said that Article 28 of the Zoning Ordinance requires that a Mixed-Use Entertainment project must be located on an adequate thoroughfare, and opined that this proposed development does not meet that requirement because Nicholasville Road does not function adequately. Mr. Graddy read into the record some of the public comments submitted as part of the SAP process:

"Fix traffic and roads first."

"If traffic worsens, no one will live here."

"Traffic needs to be addressed."

"One of the main concerns of the public was traffic."

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Adam Kirk, engineer, was present to present the traffic study commissioned by the neighbors who oppose this request. He said that he reviewed the petitioner's Traffic Impact Study (TIS) and used the numbers on which that study was based.

Mr. Kirk said that he believes that, where the TIS was performed, it did an adequate job; however, it left a lot of unanswered questions about how traffic in the vicinity of the subject property will function in the future. He believes that issues like trip generation, total volume of traffic, room for future improvements, and how the proposed access points will affect the arterials should be addressed now, rather than at the Final Development Plan stage.

Mr. Kirk stated that his comments will refer to the Kentucky Transportation Cabinet (KYTC) requirements for a traffic study, the first of which deals with existing conditions. The KYTC requires that the existing conditions be calibrated to the roadway with regard to queues, travel speed, headway, and other factors; if the initial model is flawed, all of the resulting calculations will be erroneous as well. Mr. Kirk said that the petitioner's TIS provides no calibration or validation of existing conditions, which, he believes, invalidates their model. He displayed several photographs of Nicholasville Road near its intersection with Man o' War Boulevard, which were taken at approximately 3:00 p.m. on a Friday afternoon, noting the stacking in all lanes of traffic. The petitioner's TIS predicts that, during PM peak hours, there will be 60' of queue in the southbound lanes, which, Mr. Kirk believes, reveals an error in the synchronization of signals in the study model. After correcting the model data, he recalculated the queuing information and received an updated response of queues in excess of 700', with an 80-second delay, which would likely be a Level of Service "D" for that intersection. Mr. Kirk stated that he believes that the entire TIS underestimates the current conditions on Nicholasville Road, and that some sections could decrease to LOS "F" when the full build traffic from the proposed development is included.

Mr. Kirk said that he believes that the TIS also failed to address a future-year analysis for the proposed development. He explained that KYTC requires that analysis because road improvements involve a large public infrastructure investment, some of which is predicted for 20 to 30 years out. Allowing one private developer to "use up" many years' worth of roadway capacity would be poor management of that public investment. Mr. Kirk stated that it is wise to also consider capacity 10 years out, in order to ensure that public infrastructure funds will not be needed to correct problems caused by too much private development. He said that, when he ran the future-year data, he found much more significant traffic impacts, including further decreases in Levels of Service. As part of his travel speed analysis, Mr. Kirk noted 10-year projections of up to 15 minutes of travel time from Man o' War Boulevard to Wilson Downing Road.

Mr. Kirk stated that, in his opinion, the SAP recommendation of constructing a SPUI at the Nicholasville Road/Man o' War Boulevard intersection would provide a significant capacity improvement for the entire area. He said that the proposed right-in/right-out access to those two roadways can function with a SPUI, so the construction of those accesses would not necessarily preclude that improvement. However, Mr. Kirk does not believe that the density of the proposed development is appropriate for right-in/right-out intersections, in terms of intensity and trips generated. He said that it is crucial to be able to provide improvements to protect this area in the future.

Mr. Graddy asked the Planning Commission to find that the petitioner's TIS is incomplete and not in compliance with the Zoning Ordinance and the KYTC requirements, based upon the evidence presented by Mr. Kirk. He also asked that the Commission find this rezoning request to be contrary to the Comprehensive Plan, since it would "foreclose the opportunity for a Single Point Urban Interchange," adding that the proposed development is also contrary to the right-in/right-out recommendations of the SAP. Also with regard to the SPUI, Mr. Graddy asked the Planning Commission to require that the buildings proposed nearest the Man o' War Boulevard/Nicholasville Road intersection be moved in order to provide sufficient space for the construction of the SPUI.

Mr. Graddy read the following into the record from the SAP:

"To handle additional traffic volumes and flow, and to accommodate turn lanes, the Kentucky Transportation Cabinet has recommended that an additional 45' of right-of-way be added. KYTC also recommended keeping signalized intersections limited to the existing locations: East Tiverton Way, Man o' War Boulevard, and Southpoint Drive, as this spacing is designed to ease traffic congestion. A right-in/right-out access is recommended for Nicholasville Road across from the Wal-Mart."

Mr. Graddy said that his clients are requesting the following action from the Planning Commission: 1) remove the commercial buildings "W" and "V," designate that portion of the property as open space, and do not connect the subject property to Habersham Drive; 2) remove the commercial buildings "P" and "N" from the area near the Nicholasville Road/Man o' War Boulevard intersection, in order to designate that area as open space until such time as the SPUI can be constructed; 3) remove the residential buildings "FF," "GG," and "HH," in order to provide a buffer for the adjoining neighborhoods, and designate that area for open space or Professional Office uses; 4) withdraw the plan for the proposed signalized intersection across from Wal-Mart, which the opponents contend will make Nicho-

lasville Road more unsafe; 5) reduce the density of the proposed development; and 6) support the efforts of LFCUG and the petitioner to widen East Tiverton Way, in order to improve the existing traffic situation in the area.

Darby Turner, attorney, was present representing the owners of Fayette Mall. He distributed to the Commission members copies of a traffic study performed by CDM Smith. They began that study approximately two years ago, before the petitioner's plans for the subject property became public, in effort to understand and prepare for future changes to the Nicholasville Road corridor.

Mr. Turner stated that his clients are not opposed to the proposed commercial development on the subject property, and they understand the concerns of the Fritz family, who are attempting to develop their agricultural property in a highly urbanized area. His clients' primary concerns are increased traffic and the proper functioning of Nicholasville Road. Mr. Turner said that Fayette Mall was developed in 1973; and, since that time, there has been a great deal of growth for the mall, and along the Nicholasville Road corridor. While passing traffic is desirable for commercial developments, Mr. Turner's clients are concerned about the capacity of Nicholasville Road, particularly since there are still two undeveloped parcels near the subject property. They believe that, unless the necessary road improvements are handled properly and in a timely manner, it could result in the deterioration of the commercial activity in the area.

Mr. Turner stated that his clients are particularly concerned about the proposed signalized intersection across from the Wal-Mart property, because it could prevent the construction of the SPUI at the Man o' War Boulevard/Nicholasville Road intersection, which is recommended by the SAP and the MPO Transportation Plan. His clients contend that sufficient traffic studies have not been completed to adequately address increased capacity and decreased congestion on Nicholasville Road to the Jessamine County line.

Mr. Turner said that, in his clients' opinion, the proposed development plan "is not ready to be approved." They contend that there are significant road improvements that should be planned, if not implemented, prior to the construction of the proposed development; or the proposed development should be "right-sized" to match the existing traffic capacity. Mr. Turner asked that the Planning Commission reconsider whether it would be appropriate to approve the proposed development plan at this time.

Mr. Graddy stated that included in his exhibit packet were copies of petitions submitted in opposition to this request.

Citizen Objection: Edward Prentice, 396 Fox Harbour Drive, stated that he believes that the proposed access point onto Habersham Drive will severely impact the residents of his street, who will not be able to exit their neighborhood.

Mr. Prentice said that the petitioner, the Fritz family, and the local government will all profit from the proposed development, at the expense of the adjacent neighborhoods. He opined that the model of the development is attractive, but the footprint is too large.

Mr. Prentice asked that the Planning Commission disapprove this request on behalf of the residents of the adjoining neighborhoods, as well as the thousands of travelers along Nicholasville Road, who will all be subject to additional traffic congestion. He said that he believes that this is "the wrong development on the wrong property."

Petitioner Rebuttal: Mr. Lear stated that he believes that most of the opposition to this request amounts to "an attempted indictment of the planning process." He said, with regard to the assertion that parts of this proposal do not meet the guidelines of the KYTC, that that same entity reviewed this proposal, and gave conceptual approval for the proposed right-in/right out access and new signalization. The petitioner believes that the new signal on Nicholasville Road will "provide the greatest amount of relief possible" for drivers on East Tiverton Way and Habersham Drive.

Mr. Lear said that the owners of Fayette Mall had never expressed concerns about traffic on Nicholasville Road before, including during their large expansion project several years ago.

Mr. Lear stated that several references were made to the SAP recommendation for the construction of a SPUI at the Nicholasville Road/Man o' War Boulevard intersection, but that alternative is mentioned only in a three-sentence paragraph. The recommendation was part of the state MTP, to be constructed in 2030 or thereafter.

Mr. Lear said that the main issue during this hearing is "whether the planning process makes sense." He said that the petitioner's TIS was developed over a period of time, not just one afternoon, and the entire traffic cycle was considered. The TIS report was heavily scrutinized by the staff and the KYTC, who are well aware of the issues in the Nicholasville Road area, and how best to address them.

Mr. Lear stated that the Fritz family has requested several zone changes for retail uses for their property, all of which have been disapproved, and many of which were then developed nearby. He said that the proposed zone change is in agreement with the Comprehensive Plan recommendation, and it is time for the Fritz Farm to be redeveloped.

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Opposition Rebuttal: Mr. Turner stated that his clients contend that the development plan for the subject property is incomplete at this time, and that there are far "too many open questions" being pushed to the Final Development Plan stage.

Staff Rebuttal: The staff had no rebuttal comments.

Commission Questions: Ms. Plumlee stated that she believed that, when developers and neighbors work together, a development improves. She asked if there was any chance that the petitioner would consider removing buildings "P" and "N" at the corner of Man o' War Boulevard and Nicholasville Road. Mr. Silverstein responded that he understands the need to reach an accord with the neighborhood; but he believes that it is unreasonable to suggest that, after two years of planning the proposed development, the density should be reduced so severely. He said that he does not understand how the removal of those two buildings would address the neighbors' concerns. Mr. Silverstein stated that he would be willing to agree to certain conditions, such as keeping construction traffic out of the neighborhoods and conducting pre-construction blasting as carefully as possible, with notice to residents. However, he does not believe it is reasonable to request the removal of those buildings at this time.

Mr. Wilson asked, with regard to the stormwater basin, if additional properties would need to be secured in order to construct the basin. Mr. Edelen answered that the petitioner has been cooperating with an ongoing LFUCG plan, a part of which requires the construction of a detention basin on the property sufficient to control a set volume of stormwater. The petitioner does not intend to acquire any additional properties as part of that effort, but LFUCG could possibly be considering such a purchase.

Mr. Lear stated that, in several areas of Lexington, LFUCG has bought houses that were heavily impacted by flooding, rather than upsizing facilities downstream. He said that acquisition of one or more residences downstream for flood mitigation has long been part of the recommendations for the area surrounding the subject property. Mr. Lear added that it could be possible that, by increasing the size of the proposed detention basin, the purchase of homes could be avoided. Mr. Martin noted that the staff had a recent conversation with the Division of Water Quality, who indicated that property acquisition is a possibility, but it has not been deemed necessary at this time; nor would any homes be purchased from property owners who do not wish to sell.

In response to Mr. Lear's and Mr. Martin's comments regarding possible purchase of properties, Ms. Beatty stated that, on an earlier plan, it appeared that there were three privately owned residential structures included in a cove-like area near the subject property. Mr. Martin answered that the staff had discussed the various stormwater solutions for the area, and there were several properties that had been identified for potential purchase.

Mr. Penn stated that the subject property receives a lot of stormwater runoff, since 102" of pipes feed into it. He noted that this is a preliminary development plan, and the Commission should be reviewing it on its merits, not trying to "make a deal" or re-do the plan at this point.

Mr. Cravens asked, with regard to the proposed right-in/right-out access on Man o' War Boulevard, if traffic will flow smoothly, or be required to stop when entering the subject property. Mr. Martin answered that, at the Final Development Plan stage, circulation, stop bars, and other issues would need to be resolved. Mr. Cravens said that traffic movement at that access has been one of his major concerns throughout the Commission's review of this plan. Mr. Edelen noted that the petitioner's intent is to allow the free flow of traffic into the property at that access, so that cars will not back up onto Man o' War Boulevard.

Mr. Cravens said that there had been some discussion about a possible 2015 build-out for the subject property; he asked if the petitioner intended to complete the entire project by then, or construct it in phases. Mr. Silverstein responded that the goal is to open a significant portion of the development by the fall of 2015, but there could be some phasing as well. He added that all of the residential units above retail will be completed by that time, but the free-standing residential units will be constructed according to market demand.

Mr. Wilson asked if the Commission should make a motion to delete variance #3, as recommended by staff, although the petitioner did not mention it in their presentation. Mr. Lear said that the petitioner had discussed that issue, and they would like to withdraw the requested variance #3. He added that, if it is determined to be critical at some point in the future, the petitioner could request it at that time from the Board of Adjustment.

Chairman Comment: Mr. Owens stated that the hearing was now closed, and he would hear Commission comments.

Commission Discussion: Ms. Beatty stated that she believed that the proposed rezoning is in compliance with the recommendations of the Comprehensive Plan and the South Nicholasville Road Small Area Plan. She said that it was nice to see results from the effort put into the SAP so soon after its publication, since those plans are sometimes "shelved" for many years before any of the recommended changes are made. Ms. Beatty said that she understood the residents' concerns about traffic, but she believed that the staff has the expertise to analyze the best resolution for those traffic issues that will be created. She added that there would be the opportunity for the petitioner to con-

tinue to work with the neighborhood through the Final Development Plan stage, and that she did not believe that those concerns should prevent the Commission from making a decision on this request at this time.

Mr. Wilson said that he agreed with Ms. Beatty's assertion that the proposed development would be a good use for the subject property. He stated that he, too, understood the residents' concerns about the possible traffic impact, but planning policy in Lexington-Fayette County has been to push for Infill & Redevelopment, and this project would fit into that category. Mr. Wilson stated that he had been to the Summit development in Louisville, and he was impressed with the high-quality development and the ambiance. He added that he believed that the proposed rezoning is in compliance with the Comprehensive Plan, and that he would support this request.

Ms. Mundy said that she would like to echo her colleagues' comments with regard to the appropriateness of the proposed mixed-use development. She added that, although there will be traffic impacts, one of the benefits of Lexington's street system is the interconnectedness and the ability to find an alternate route to nearly every destination, including the Nicholasville Road corridor. Ms. Mundy stated that there are professionals whose job it is to analyze those traffic concerns; the Planning Commission's responsibility is to consider the Comprehensive Plan recommendation and base their decision on the appropriateness of the rezoning. She added that she would like to commend the petitioner and the staff for all of their hard work on this project.

Mr. Penn stated that he does not like to see farmers sell their land, but the subject property ceased to be useful as agricultural land long ago, and it is developable. He opined that the mixed-use zone is the best means to develop the property, although the Final Development Plan could be significantly different from the plan before the Commission today. Mr. Penn said that he believed that the time has come to develop the Fritz Property, and he was ready to make a motion for approval.

Mr. Owens said that he believed that traffic will always be an issue on Nicholasville Road, as it has been for many years. He agreed with Ms. Mundy that the Commission should leave it up to the staff and the Division of Traffic Engineering to do their jobs in addressing those traffic concerns. Mr. Owens stated that, although he appreciated the residents' concerns, he believed that "it would be foolish to think that this corner would never be developed."

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 9-0 (Brewer and Roche-Phillips absent) to approve MARV 2013-7, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Penn, seconded by Mr. Wilson, and carried 9-0 (Brewer and Roche-Phillips absent) to approve the requested variances #1 and #2, withdrawing #3, for the reasons provided by staff.

Article 28 Compliance Action: A motion was made by Mr. Penn, seconded by Ms. Beatty, and carried 9-0 (Brewer and Roche-Phillips absent) to find that the proposed plan complies with the Zoning Ordinance Article 28.

Development Plan Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 9-0 (Brewer and Roche-Phillips absent) to approve ZDP 2013-22, with the 15 revised conditions, removing the word "construction" from condition #15.

3. **MMA MANAGEMENT, LLC, ZONING MAP AMENDMENT & HOUGHAM PROPERTY, LOT 1, ZONING DEVELOPMENT PLAN**

- a. MARC 2013-8: MMA MANAGEMENT, LLC (6/27/13)* - petition for a zone map amendment from a Light Industrial (I-1) zone to a Heavy Industrial (I-2) zone (with zoning restrictions), for 20.0 net (22.71 gross) acres, for property located at 1100 Alexandria Drive (a portion of). A conditional use permit is also requested with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan recommends Light Industrial (LI) future land use for the subject property. The petitioner has requested a Heavy Industrial (I-2) zone, with conditional zoning restrictions, in order to establish a vehicle recycling facility. A conditional use permit has also been requested as part of this zone change.

The Zoning Committee made **no recommendation** on this request.

The Staff Recommended: **Disapproval**, for the following reasons:

1. Although proposed to be significantly restricted, the requested Heavy Industrial (I-2) zone is not in agreement with the 2007 Comprehensive Plan, for the following reasons:

* - Denotes date by which Commission must either approve or disapprove request.

- a. The Land Use Element of the Comprehensive Plan recommends Light Industrial (LI) future land use for the subject property. According to the text of the Plan, this is defined as "those establishments that assemble finished or semi-finished materials, food preparation, publishing, communication, construction materials, or any establishment or repair services that may present a moderate nuisance to adjacent properties."
 - b. No assembly of finished or semi-finished materials, food preparation, publishing, communications industry, construction materials or repair service is proposed for the subject property.
 - c. Heavy Industrial (HI) uses, according to the text of the Plan, have a high (rather than moderate) potential for nuisance factors such as noise, odors or vibrations, and are for uses that are somewhat unique or rare, such as "a mining establishment, power production facility, a stadium, or a waste disposal facility." The proposed use is unique; and, except for a similar facility located on 7th Street (an apparent non-conforming use dating back at least 50 years), only 25 or so are operated in the United States by the applicant.
2. The existing I-1 zone is appropriate for the subject property. It is the same as that found in the rest of the area and would permit uses in keeping with the 2007 Plan's future land use recommendation. Such uses would likely result in more employment (on a per acre basis) than that proposed by the applicant for the subject parcel.
 3. There have been no unanticipated changes of an economic, social or physical nature that have occurred in this area since the 2007 Plan was adopted.
- b. REQUESTED CONDITIONAL USES
1. Yard for storage of dismantled or partially dismantled automobiles
 2. Junk Yard

Should the Planning Commission recommend Approval of the requested I-2 zone change, the Staff Recommends: Approval, for the following reasons:

1. A yard for storage of dismantled or partially dismantled automobiles and/or a junk yard, which are the two most similar uses to the applicant's proposed vehicular recycling center, should not adversely affect the subject or surrounding properties. The amount and type of traffic anticipated with this use should be able to be handled with the extension of Enterprise Court connecting to the adjacent business park.
2. All necessary public services and facilities, such as police and fire protection, are available and adequate for the proposed use.

This recommendation is made subject to the following conditions:

1. Provided the subject property is rezoned I-2 by the Urban County Council; otherwise, any Planning Commission action of approval is null and void.
2. The property shall be developed according to the submitted application and Zoning Development Plan, or as further amended by the Planning Commission.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction, and prior to occupancy of the facilities.
4. The accessory parking lots and driveways shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. The final design of the parking lots, access drives and internal parking lot circulation shall be subject to review and approval by the Division of Traffic Engineering.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The approval of a junk yard at this location is to be limited to the processing of automobiles only, and would not apply to other materials, such as used lumber and building salvage, that are within the definition of a "junk yard" found in Article 1-11 of the Zoning Ordinance.
8. Prior to approval of a final development plan, a qualified environmental professional will make a recommendation on the type of surface that should be used in the vehicle storage area and provide information on possible storm drainage impacts to the spring located to the south of the subject site.

Should the Planning Commission recommend Disapproval of the requested I-2 zone change, the Staff Recommends: Disapproval, for the following reasons:

1. Under Article 6-4(c) of the Zoning Ordinance, the Planning Commission may only hear conditional uses and variances when filed with an associated zone change. Thus, unlike the associated zoning development plan, the Commission may only consider this matter within 90 days of its filing.
 2. Disapproval of the conditional use does not prohibit the applicant from filing a conditional use application with the Board of Adjustment, should the Urban County Council approve the requested I-2 zoning of the subject property.
- c. ZDP 2013-21: HOUGHAM PROPERTY, LOT 1 (5/23/13)* - located at 1100 Alexandria Drive.
(EA Partners)

* - Denotes date by which Commission must either approve or disapprove request.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property I-2; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of information regarding environmentally sensitive areas.
7. Resolve timing of the construction of the detention basin at the rear of the property.
8. Discuss proposed access and the timing of the construction and dedication of Enterprise Drive.

Commission Comment: Mr. Berkley stated that he had been advised by Ms. Jones that he should abstain from the hearing on this item, as he owns property in the industrial park where the subject property is located.

Note: Mr. Berkley left the meeting at this time.

Zoning Presentation: Mr. Sallee began the presentation of the staff's zoning report by noting that the staff had received three communications from citizens in opposition to this request: one from the Fayette County Neighborhood Council; one from the Saddle Club Homeowners Association; and an email from the Beaumont Park Neighborhood Association. He distributed copies of those documents to the Commission members for their review.

Mr. Sallee briefly oriented the Commission to the subject property at 1100 Alexandria Drive, which is located along a collector street that intersects Old Frankfort Pike to the north of the property. An at-grade railroad crossing, as well as the New Circle Road overpass, are located near the subject property along Alexandria Drive. A short distance to the east is the three-way stop at the intersection of Alexandria with Viley Road. Mr. Sallee said that the subject property is currently accessed via either Alexandria Drive, where there is an existing driveway to an agricultural portion of the property; or, via Enterprise Court, which terminates into the subject property. He noted that there is also an at-grade railroad crossing (of the same line that crosses Alexandria Drive) on Enterprise Court. The parcel being requested for rezoning at this time comprises slightly over half of the entirety of the property at 1100 Alexandria Drive, on the northern portion of the property. The southern half is currently zoned I-1, and is not part of the proposed rezoning.

Mr. Sallee displayed several photographs of the subject property, including: 1) a view from the south, noting the adjacent mini-warehouse development in the industrial park; 2) a closer view of the property, from the opposite direction; and 3) the access to the subject property from the signalized intersection at Enterprise Drive, along Old Frankfort Pike, and Enterprise Court, which is a local street also serving the mini-warehouse facility and a cell tower.

Mr. Sallee stated that the petitioner had proposed conditional zoning restrictions as part of this rezoning application. Those restrictions would allow only: the principal permitted uses in the I-1 zone; automobile assembling, rebuilding, and reconditioning; gas storage, either above or below ground, under a number of conditions; vehicle storage yards; and adaptive reuse projects as set out in the Special Provisions in the Zoning Ordinance. The petitioner has indicated that approximately 15 to 20 employees are proposed for this use.

Mr. Sallee said that the staff had distributed to the Commission members a portion of the text of the 2007 Comprehensive Plan. The Land Use element of the Comprehensive Plan recommends Light Industrial use for the subject property, which generally includes "establishments that assemble finished or semi-finished materials; food preparation; publishing; communication; construction materials; or establishments or repair services that may present a moderate nuisance to adjacent properties." Mr. Sallee explained that the purpose of distributing that portion of the Comprehensive Plan to the Commission was to help differentiate the differences between Heavy Industrial and Light Industrial uses. He said that, in general, Heavy Industrial uses have a higher potential for nuisance than do Light Industrial uses; they are more likely to manufacture items from raw form; and they often involve unique or rare land uses.

Mr. Sallee stated that the proposed use of the subject property is somewhat unique, in that there are only approximately 25 such uses operated by the petitioner in the United States. He said that the staff was only able to find one similar use in the Urban County. He displayed a photograph of that use on the overhead, explaining that it was either currently or formerly known as Bluegrass Auto Parts on Seventh Street. At that facility, customers can remove parts from vehicles that are no longer operable.

Mr. Sallee stated that the staff cannot find that the petitioner's proposal to construct an automobile recycling facility is in agreement with the Light Industrial land use recommendation of the Comprehensive Plan. In addition, in evaluating the appropriateness of this request, the staff was concerned that the facility is not expected to generate a large

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number of new jobs, given the acreage of the property (less than one job per acre), and that there is a limited amount of industrial land in the community. Mr. Sallee said that the staff found it would be more appropriate to try and create a greater number of jobs with the available vacant industrial land. The staff also could not identify any unanticipated changes in the vicinity of the subject property since the 2007 Comprehensive Plan was adopted; and they could not find that the existing I-1 zoning was inappropriate, given that it is surrounded, with one exception, by Light Industrial property. Thus, Mr. Sallee stated that the staff is recommending disapproval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan, noting that the staff had distributed their revised recommendation to the Commission members prior to the start of the hearing.

Mr. Martin stated that the petitioner is proposing to construct two structures on the subject property: a main building for customer access and inventory control, and a building for processing vehicles after the parts have been removed. The petitioner is proposing an access point to Enterprise Court, with an extension of that roadway, and associated parking. That extension of Enterprise Court is not included as part of this plan at this time.

Mr. Martin stated, with regard to the staff's revised recommendation, that one of the conditions involves the construction of the detention basin on the property, which was originally depicted on the plan as spanning a property line. The staff also believes it would be appropriate to discuss the timing of the construction of the basin relative to the display area at the time of the Final Development Plan. There were some questions regarding the necessity of the basin, future development, and what portion of the property the basin will serve.

Mr. Martin said that of greater concern to the staff was the extension of Enterprise Court, which the staff has discussed extensively with the petitioner. The 20-acre property requires substantial frontage on Enterprise Court, and the staff is concerned about the timing of the construction of that roadway, since the previous preliminary plan for the property depicts future lots that would need to have access provided via that roadway. Mr. Martin stated that, since the petitioner is proposing to tightly control the proposed access from Enterprise Court in order to protect their inventory, the staff believed that it might be appropriate to provide an emergency entrance to the vehicle storage yard along Alexandria Drive. The staff believes that the timing of the construction, any necessary additional right-of-way dedication, and other issues can be determined at the time of a Final Development Plan for the property. Mr. Martin stated that the Subdivision Committee recommended approval of this plan.

Commission Question: Mr. Owens asked Mr. Martin to elaborate on the proposed use of the processing building depicted on the plan. Mr. Martin stated that it was the staff's understanding that, after cars on the site have been utilized for parts, they are processed and prepared for shipping.

Conditional Use Request Presentation: Mr. Emmons presented the staff report on the conditional use request, explaining that the petitioner is requesting two uses: a yard for storage of dismantled or partially dismantled automobiles, and a junkyard. Both of those uses are conditional uses in the I-2 zone; the petitioner is proposing a vehicular recycling facility, which is not a defined use in the Zoning Ordinance; the two conditional uses proposed are those that most similar to the petitioner's proposed use, and are defined in the Ordinance.

Mr. Emmons explained that, when the Planning Commission reviews a conditional use request, they take on the role of the Board of Adjustment. The standards that they must consider for a conditional use are: whether the proposed use will cause any adverse impacts to the subject or surrounding properties; if there is adequate public infrastructure to serve the conditional use; and if there are special circumstances that must be considered. Mr. Emmons noted that the two conditional uses requested are most similar to the petitioner's proposal; however, the complete definition of "junkyard" allows more activities than what the petitioner is proposing at this location, including the receiving of lumber and various types of scrap metal.

Mr. Emmons stated that the staff report on this conditional use request refers to three distinct areas of the proposed vehicle storage yard use: the customer service area and paved parking lot; the vehicle storage area, which is proposed to be graveled; and the processing facility, where the vehicles will be drained and crushed, which will be limited to employees only. The processing facility, which will involve the most intense use on the property, is the reason behind the petitioner's request for a junkyard use.

Mr. Emmons said that, in considering whether the requested conditional uses will constitute a nuisance to nearby property owners, the staff recognized that the most intense uses are proposed to be in the processing area, which will be located approximately 1,500 feet away from the nearest residential property. That portion of the property is surrounded by other industrial uses, and is located along the railroad line; the staff believes that it will be the most buffered area of the property.

Mr. Emmons noted that the staff was concerned about the existence of a spring-fed pond on a portion of the Hougham property not included in this rezoning request, due to the petitioner's intent to use gravel in the area where inoperable vehicles will be stored. The staff is recommending that, should the requested zone change be approved,

the petitioner must consult with an environmental specialist prior to the approval of a Final Development Plan, in order to ensure that the groundwater quality will be protected.

Mr. Emmons stated that the staff is recommending approval of the conditional use request, for the reasons as listed in the staff report and on the agenda, subject to the eight conditions as listed. He noted that the staff recommended condition #7 in order to require that the operations on the subject property are limited to the processing of automobiles only, which would prohibit the processing of other materials that might be permitted by the Zoning Ordinance for such a use. He added that the petitioner is proposing to process the vehicles with a car crusher, rather than a shredder, which is much quieter and less intense.

Mr. Emmons explained that, since the staff was recommending disapproval of this rezoning request, they also included findings for a recommendation of disapproval for the conditional use, should the Commission recommend disapproval of this rezoning request.

Commission Question: Ms. Plumlee asked, with regard to condition #6, what would happen if the Division of Environmental Quality determined that there was a problem on the site. Mr. Emmons answered that it was not a question of there being circumstances that would prevent the Division of Environmental Quality from approving the proposed plan; rather, under what circumstances could they approve it. He explained that there would likely be some type of engineering solution to any problems that might be discovered.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He said that, although the staff is recommending approval of the petitioner's conditional use request, they are recommending disapproval of the zone change, because it does not comply with the Comprehensive Plan's land use recommendation. Mr. Simpson said that, since 2001, no Heavy Industrial land has been recommended for future development in Lexington-Fayette County. The subject parcel, however, has been recommended for Light Industrial development since 1969. The petitioner contends that the "low-intensity industrial" use proposed is "equal to or less than" some of the existing uses in the Light Industrial zone. The petitioner also contends that surrounding the proposed use by other uses, which are zoned I-1 but have more intense uses than the subject property, results in the proposed vehicle storage facility being in substantial compliance with the Comprehensive Plan.

Mr. Simpson stated that the petitioner also has a long track record of being an exemplary environmental steward of its property. He said that the term "junkyard" has a negative connotation, and the petitioner encountered resistance from some of the communities in which their 25 existing facilities are located, as well, during the early phases of development. The petitioner contends that their business is "totally green:" cars are brought to the property; fluids are drained and recycled; vehicles are placed on the storage yard; customers are able to pull parts from the vehicles; and the vehicles are then crushed, three cars at a time. The petitioner also contends that their facilities are low-impact, for Light Industrial uses.

Mr. Simpson said that the petitioner has a positive reputation for taking care of their property and being good neighbors to their surrounding communities. The petitioner has reached out to the owners of the neighboring properties in the Enterprise Industrial Park; representatives of Calumet Farm; and the surrounding neighborhoods. The petitioner in particular hoped to get feedback from the neighborhoods, in order to get their feedback about the proposed vehicle storage yard, and to get suggestions about how to make the use more compatible with the rest of the surrounding area.

Steve Levetan, Senior Vice-president of Pull-A-Part, stated that it was important for the Commission to see what the company does and does not do, since there is a stigma attached to their industry. He said that the Pull-A-Part operation is "not what people's image of the industry is."

Mr. Levetan said that Pull-A-Part is a do-it-yourself, discount used auto parts retailer. They have 25 locations in 12 states, having started as a small, family-owned recycling business in 1915.

Referring to an aerial photograph displayed on the overhead projector, Mr. Levetan stated that the subject parcel is completely surrounded by industrial uses. He said that the entire facility would be surrounded by a solid, 8-foot steel wall for security and visual purposes. The petitioner makes a commitment to site design, environmental protection, and customer satisfaction for community in which they are located.

Mr. Levetan stated that Pull-A-Part has won several awards for environmental protection. He said that inoperable vehicles left on the streets often leak hazardous fluids. By moving those vehicles, and ensuring that all the fluids are properly removed and recycled, the petitioner helps to mitigate environmental hazards. All fluids are safely removed from each vehicle and stored under roof, in above-ground storage tanks, and batteries are safely transported to off-site recycling locations. Mr. Levetan played a brief video, which indicated that each Pull-A-Part location removes approximately 8,000 – 10,000 cars from city streets, and recycles more than 50,000 gallons of fluids, each year. He said that, until 2003, vehicles often contained one or more switches, each of which could contain as much as a gram

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of mercury. Each gram of mercury is enough to contaminate 132,000 gallons of water above Environmental Protection Agency (EPA) drinking water standards. Mr. Levetan noted that Pull-A-Part's Atlanta facility recently was chosen for the commemoration of the one millionth mercury switch nationally, which included attendance by representatives of the EPA. He stated that each facility also has a stormwater permit, as well as spill prevention and stormwater pollution plans. Each such plan is specifically engineered for its site, and notes any issues particular to that site.

Mr. Levetan said that, although the subject parcel is completely surrounded by industrial uses, there are some neighborhoods nearby. He displayed a video that featured testimonials from several residents who live near Pull-A-Part facilities, who indicated that the company operates clean, environmentally safe properties. Integrity Real Estate Resources, a national commercial valuation company, conducted research that found that Pull-A-Part had no negative impact on resale or home values. The petitioner contends, rather, that in some cases the fully screened and fenced facilities left a much better impression on nearby residents. In addition, noise level testing indicated that noise levels are less than normal outdoor conversation. The petitioner plants extensive landscaping at each location in order to make their facilities visually pleasing, as well.

Mr. Levetan displayed several photos of Pull-A-Part facilities, noting the Norcross, Georgia facility, where one of the nearby residents gave a testimonial about the lack of noise from the facility in the video; the Indianapolis facility, which is located in an industrial park similar to the subject property; and the Louisville facility, noting the stormwater retention area, which is a 12.5-acre wetland with resident wildlife.

Mr. Levetan stated that the proposed Pull-A-Part facility is projected to create about 20 jobs directly, and a number of other jobs indirectly. He said that those jobs will provide full medical benefits and retirement to employees.

Mr. Levetan played another brief video, which indicated that the petitioner will spend between \$4 and \$5 million developing its new facility on the subject property, which would then be expected to generate \$2.5 million in annual sales. Mr. Levetan said that one of the company's main goals is to improve lives in each community where they have a facility.

Mr. Simpson stated that the proposed Pull-A-Part facility is a new concept in Lexington. He displayed a photograph of a junkyard, noting that he believed that many of the neighbors were opposing this request out of fear that a junkyard might locate near their neighborhoods. Mr. Simpson displayed several photographs of Pull-A-Part facilities around the country, noting that the cars, parked in orderly rows, appear much the same as cars in the parking lot at Commonwealth Stadium, of which he also displayed a photograph.

Mr. Simpson displayed several photographs of the other uses in the Enterprise Industrial Park, noting that the petitioner contends that the proposed facility would be a less intense use than many of the uses located there. Referring to his exhibit packet, he said that the Comprehensive Plan states that the Light Industrial zone "is intended for manufacturing, industrial, and related uses, not involving a potential nuisance in terms of smoke, noise, odor, vibration, heat, light, or industrial waste." The petitioner contends that the proposed Pull-A-Part facility falls within the intent of that description. Mr. Simpson said that the Light Industrial zone allows asbestos manufacturing; rebuilding of auto parts; building materials and sales; rental storage yards; crematoriums; underground storage of inflammable liquids; railway or truck terminals; and stone monument works. The petitioner contends that the proposed facility will be very similar to, or less intense than, all of those uses. For that reason, the petitioner is suggesting conditional zoning restrictions to prohibit every other use in the I-2 zone.

Mr. Simpson stated, with regard to the neighbors' concerns about the proposed Pull-A-Part facility, that the petitioner has study results that indicate that their other facilities are not noisy. The petitioner also consulted with Ted Hardwick, professor of Landscape Architecture at the University of Kentucky, to prepare an exhibit depicting what the facility could look like from several viewpoints in the area. Mr. Simpson said that, from Kelsey Drive (approximately 400-700' away from the subject property), residents should not be able to see the facility at all, because the New Circle Road overpass slopes upward. He added that the facility should not be visible from Enterprise Industrial Park, Alexandria Drive, Our Native Lane, or Calumet Farm, due to the screening that the petitioner has committed to installing, which will include a 10' berm and a 10' fence. Mr. Simpson noted that the residents of Our Native Lane could likely see the Cloud Concrete facility, which is located in the industrial park, and another concrete facility could locate on the subject property without a zone change.

Mr. Simpson said that the Planning Commission previously approved a preliminary subdivision plan for the entirety of the subject property, with 34 Light Industrial lots and access to Alexandria Drive, which could be constructed at any time. If those industrial buildings were built, there would be no requirement to screen them from the surrounding residential uses.

Mr. Simpson stated that, because of the commitments that the petitioner has made, the owners of Calumet Farm are not opposed to the proposed Pull-A-Part facility. In addition to the commitments to limit the use of the property to a vehicle storage facility; provide screening beyond the requirements of the Zoning Ordinance; restrict the Alexandria Drive access to emergency vehicles only; and limit lighting, the petitioner has committed to placing the car flattener

within an enclosed structure, which will be surrounded by an 8' steel fence. Mr. Simpson said that the petitioner contends that the proposed Pull-A-Part facility in an I-2 zone would be a better use for the property than many of the allowable uses in the existing I-1 zone, which could be up to 75 feet in height.

Citizen Support: Steve Caller, real estate developer, stated that he and his partners developed the Enterprise Industrial Park. He said that he supports the proposed zone change, because he believes that the proposed Pull-A-Part facility will be a good neighbor.

Bill McAlpin, owner of the subject property, stated that he and his partners were initially apprehensive when the petitioner approached them about purchasing a portion of their acreage for the proposed facility. He said that his partner, Ray Ball, after touring the Louisville Pull-A-Part facility, indicated that he believed that it would be a good use for the subject parcel. Mr. McAlpin noted that he and his partners would be the neighbors most affected by the facility, because they still own the adjoining 21 acres, and they believed that Pull-A-Part would be a good neighbor.

Mr. Caller stated that, five years ago, the city of Lexington entered into a lease with the petitioner for land they owned on Old Frankfort Pike, which was a reclaimed brownfield area. The state environmental agency, however, would not allow anyone to "break the cap" on the site, so the deal fell through, but the proposal met all of the necessary city requirements.

Note: Chairman Owens declared a brief recess at 6:35 p.m. The meeting reconvened at 6:42 p.m., with the same members in attendance.

Citizen Opposition: Christine Westover, attorney, was present representing the High Point Neighborhood Association. She said that, no matter how appealing the proposed Pull-A-Part facility might sound, the Planning Commission is bound by the statutory requirements set out in KRS 100.213 that govern the granting of a zone change. If the Commission chooses to grant this requested zone change, they must be able to find that the request is in agreement with the Comprehensive Plan; that the existing zoning is inappropriate and the proposed zoning is appropriate; or, that there have been unanticipated changes in the area since the adoption of the Comprehensive Plan. Ms. Westover contended that there has been no evidence presented to indicate that the existing I-1 zoning is inappropriate, or that there have been unanticipated changes the area. She noted that Mr. Simpson's primary argument has been that the proposed facility is similar to Light Industrial uses; since he cannot prove both appropriateness and inappropriateness, that finding was not applicable in this case.

With regard to the first finding, for agreement with the Comprehensive Plan, Ms. Westover stated that case law shows that the most important element of the Plan is the Land Use map. She said that the subject property is recommended for Light Industrial use; as a matter of law, the proposed zone change does not meet the requirements that would allow the Commission to adopt the finding that the rezoning could be granted. She read the following into the record, from the Comprehensive Plan:

"The zone is intended for manufacturing, industrial, and related uses, not involving potential nuisance in terms of smoke, noise, odor, vibration, heat, light, or industrial use."

Ms. Westover explained that some of the uses in the I-2 zone that are permitted by right are included as conditional uses in the I-1 zone, because it is important to study properties to see whether they have the characteristics that would support the conditional use. In the Heavy Industrial zone, which would be the only zone to allow the proposed use, the allowable uses tend to be more intensive, noxious, and noisy. Ms. Westover stated that the proposed use of the subject property meets the definition of a junkyard, which is allowed only as a conditional use in the I-2 zone, because it is one of the most potentially noxious and hazardous uses allowed in the Urban County.

Ms. Westover said that the petitioner has attempted to argue, through conditional zoning, that the proposed use was substantially similar to Light Industrial uses, but, she contended, that is incorrect. She opined that that line of reasoning actually makes the proposed use seem more like a Heavy Industrial use, because the suggested conditional zoning restrictions would eliminate many of the traditional I-1 uses that carry forward to the I-2 zone. Therefore, Ms. Westover maintains, this proposed zone change is not in agreement with the Comprehensive Plan.

Ms. Westover said that there is precedent in Lexington-Fayette County in locating junkyards in the I-2 zone. In the early 1980s, a Board of Adjustment decision permitted a junkyard in the I-1 zone. That case was litigated, and, as a result, a text amendment was enacted thereafter that clarified that junked vehicles are only permitted in the I-2 zone as a conditional use. Ms. Westover distributed a letter that was written by Bill Lear, attorney, who was representing the concerned owner of a property located near a proposed junkyard site, reading the following into the record:

"The proposed ordinance would set the precedent of legitimizing an illegal use which may have been permitted wrongfully by the Building Inspector's office. If the Ordinance can be bent and shaped to allow a Heavy Industrial conditional use to be either legalized after the fact in a Light In-

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dustrial zone, or downgraded to a use permitted in the I-1 zone, then such reclassifications may occur throughout the Zoning Ordinance. Remember that conditional uses in the Heavy Industrial zone are reserved for the most noxious businesses which are permitted to operate in Fayette County. One look at a lot upon which are stored hundreds of wrecked automobiles reveals why the framers of the current Ordinance thought it appropriate for such use to be placed in the I-1 zone, and even then, only with a conditional use permit."

Ms. Westover stated that, when the Commission chooses to rezone property, they have to think about the consequences, not just to that particular property or applicant, but globally. She said that, if the Commission makes a finding of approval for this junkyard, other uses could use the same rationale, which, she opined, "puts zoning ahead of planning."

Ms. Westover said that the petitioner is relying heavily on the protection of limiting uses on the subject property via conditional zoning, but conditional zoning is historically much easier to remove than a typical rezoning. She explained that, in order to remove conditional zoning restrictions from a property, a petitioner simply has to prove that there were major changes unanticipated since the condition was imposed. In reviewing past zone changes that were approved based on the imposition of conditional zoning restrictions which were then removed after some circumstance changed, Ms. Westover stated that she referred back to the Mist Lake Plaza rezoning. In that case, the applicant for the property at the corner of Man o' War Boulevard and Richmond Road requested a B-3 zone, with a conditional zoning restriction that the property be used as an "auto park." A few years later, the applicant requested the removal of that conditional zoning restriction, based on the fact that auto parks were no longer a viable concept. The property was then rezoned, over the Planning Commission's recommendation of disapproval, to B-3 with no conditional zoning restrictions, which resulted in the construction of the Wal-Mart store there. Ms. Westover said that, during the rezoning of the property for the Tates Creek Library in 1998, there were concerns about steep slopes and environmentally sensitive areas. The Planning Commission recommended disapproval of that rezoning, but there was a hearing at the Council, where it was approved. The Council imposed conditional zoning restrictions limiting the parking and square footage of the building, in order to protect the environmentally sensitive areas. Two years later, a request was filed to modify the conditional zoning restriction, in order to provide more usable space for the library. That request was approved by both the Planning Commission and the Council. Ms. Westover stated that, a few years after that, one of the other lot owners in the development was seeking additional square footage and parking; the Planning Commission recommended disapproval of that request, but the Council approved it. Some time later, another lot owner in the development was granted additional square footage, based upon the finding that the two previous modifications of the conditional zoning restrictions constituted a major change in the area. Ms. Westover said that those cases prove that conditional zoning restrictions do not provide sufficient protection. She noted that, between January 2000 and January 2012, every request that was filed to modify conditional zoning restrictions was approved by the Planning Commission and Council.

Ms. Westover displayed a history of the Hougham property, explaining that it was first included in the Urban Service Area boundary in 1967. The Comprehensive Plan later recommended residential uses for the property. A rezoning request, in disagreement with the Plan, was filed in 1979; it was denied. Another rezoning application, in agreement with the Comprehensive Plan, was filed in 1996; it, too, was denied. A request for rezoning for residential uses which was filed some time later was recommended for disapproval by the Planning Commission, and later withdrawn. In 2007, a rezoning request to I-1 was submitted, which was in agreement with the Comprehensive Plan. At that time, several neighboring residents worked out an agreement with the developer, and there were no opponents to the request at the Planning Commission's public hearing, where the request was recommended for approval. Ms. Westover stated that, after such an extensive history, it was possible that the subject property could be requested for rezoning again, or for a modification of the conditional zoning restrictions to allow additional I-2 uses. She said that the law says that surrounding property owners should be able to rely on the recommendations of the Comprehensive Plan in making important decisions about property investment.

Ms. Westover stated that Kentucky zoning statutes "strongly prefer planning over zoning" so that major property decisions can be appropriately considered and planned for, rather than made at the last minute on the day of a zoning hearing. She read the following ruling in the *City of Louisville v. McDonald* case:

"In the Fritz case, we invalidated a zone change because the action of the legislative body was found to be arbitrary. In that opinion, we made the following significant comment: 'An examination of the multitude of zoning cases that have reached this Court leads us to the conclusion that the common practice of zoning agencies after adoption of an original ordinance is simply to wait until some property owner finds an opportunity to acquire a financial advantage by devoting his property to a use other than for which it is zoned, and then struggle with the question of whether some excuse can be found for complying with his request for a rezoning. The result has been that, in most of the rezoning cases reaching these courts, there actually has been spot zoning, and the Courts have upheld or invalidated the change according to how flagrant the violation of true zoning principles this has been. It is to be hoped that, in the future, zoning authorities will give recognition to the

fact that an essential feature of zoning is planning.' This statement, made in 1961, has had little discernible effect."

Ms. Westover stated that the purpose of a Comprehensive Plan and a staff of professional planners is to study cases such as these. She said that this proposed use is a "landeater;" a 20-acre project that is projected to create only 20 jobs, or one job per acre. Ms. Westover displayed the Goals & Objectives of the 2007 Comprehensive Plan, noting that they refer to jobs, employment, and job creation many times; one of the major Themes of the 2012 Plan is creating jobs and prosperity."

With regard to historical land use policy in Lexington-Fayette County, Ms. Westover said that the goal has been to place reasonable development within the Urban Service Area, so as not to put pressure on the Rural Service Area, in order to maintain "the most precious and finite resource in Fayette County." She noted that, in 2007, there were 54,619 acres of land within the Urban Service Area, with almost 9,000 of undeveloped land. Ms. Westover opined that it would be "an irrational use of our precious, finite land to put 20 acres aside for a huge junkyard." She said that the time might have come for the Planning Commission to study economic development in terms of rational and sound land use, and what types of businesses should be encouraged. Ms. Westover urged the Commission members to, instead of recommending approval of this request, study the I-1 and I-2 zones with regard to the economic land use policy.

Ms. Westover distributed to the Commission members for their review copies of relevant land use cases, opining that Mr. Simpson's findings were inadequate to demonstrate why this property should be entitled to rezoning relief. She noted, with regard to Mr. Simpson's comments about the petitioner's commitment to restrict the access to Alexandria Drive, that that decision ultimately falls to the Planning Commission, not the individual property owner. Ms. Westover concluded by urging the Planning Commission to disapprove this rezoning request, because it does not comply with the state statute.

Jason Morgan, attorney, stated that he had reviewed the Property Valuation Authority (PVA) records for the properties in the Enterprise Industrial Park, and conferred with some of the business owners in the park, and they calculated that there are between 200 and 500 existing jobs on that 90 acres. He opined that that number, when compared to the 20 jobs that are projected on the 20-acre subject parcel, does not equal an efficient use of the land.

Mr. Morgan said that, in order for the Planning Commission to act as the Board of Adjustment and grant a conditional use permit, they must produce a statement of adjudicative, specific facts; the burden is on the applicant to provide those specific facts. He said that he does not believe that the Planning Commission can grant this conditional use request. He said that, in the staff report, the staff indicated their concerns about several issues, including the single access point. In *Murphy vs. Key West Crossing, LLC*, a conditional use permit was requested for a golf course. The issue in that case was safety concerns related to an access point near a railroad crossing. When the case went up on appeal, the Appellate Court ruled that the applicant did not satisfy their burden of proof that the safety issue would be addressed.

Mr. Morgan stated that the staff report also noted the staff's concerns about the safety of a spring-fed pond on the property, which is located approximately 1,000 feet away from the Wolf Run Watershed. The staff recommended, as a condition for approval of the conditional use permit, that a qualified environmental professional must make a recommendation on that issue prior to the certification of a Final Development Plan for the property. Mr. Morgan opined that, again, the petitioner failed to produce sufficient adjudicative fact, in that they did not provide the results of that professional recommendation at this hearing.

Mr. Morgan said that the staff indicated that they had discussed the single access point with the staff of the Division of Fire and Emergency Services, who were in agreement with it. He explained that that is not a delegable duty; the Planning Commission must find that they could grant the conditional use permit based on adjudicative facts before them at this hearing, provided by the petitioner.

Mr. Morgan stated that, in his legal opinion, the Planning Commission cannot grant this conditional use permit request based upon the evidence that has been presented. He said that the Court found, in the previously referenced case, that the petitioner cannot remedy the burden of proof after the fact; they could not, then, satisfy the condition requiring an environmental report at any time after this hearing.

Mr. Morgan contended that the proposed use is not in keeping with the character and integrity of the area surrounding the subject property, particularly Calumet Farm. He requested that the Planning Commission disapprove this request.

Citizen Opposition: Todd Strecker, 1404 Parterre Place, stated that he was concerned about the proposed use. He said that he has had extensive communications with the owners of Calumet Farm, who had intended to be present at this hearing, about the proposed facility.

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Mr. Strecker read his letter into the record:

"This letter represents the many contacts I have had through small group meetings and phone calls to me from residents within our neighborhood association area near the property under consideration since posting of the proposed zone change on a portion of the 40-acre tract located at 1100 Alexandria Drive. All those calling me (as neighborhood association president) have expressed strong opposition to the proposed zone change from Light Industrial to Heavy Industrial. They're concerned that this will depress property values in the area. A widely expressed objection is that I-2 zoning would remain in place beyond the time when the vehicle recycling operation may be present, opening the door to other I-2 businesses to locate on the tract. Because the business sells auto parts to the public, there is substantial concern over the volume of traffic to and from the property. This, numerous residents pointed out, will create pressure to open access directly onto Alexandria Drive from the tract. Many believe the operation will create a negative presence visually, including a less-than-desirable impact on travelers arriving by aircraft, since the property is below the northeast approach/departure flight path to Bluegrass Airport."

Mr. Strecker respectfully requested disapproval of this zone change.

John VanNagell, Advantage Linen Inc., stated that he is a tenant in the industrial park. He said that he was not opposed to the Pull-A-Part company, and he liked their proposal, but he was afraid of "cracking Pandora's Box."

Mr. VanNagell said that, once a portion of the industrial park is rezoned, other portions could follow. He opined that the industrial park currently has a good mix of light industrial tenants, and he and many of the other tenants are concerned about what could possibly happen there if this request is approved.

Georgia Cruse, 1171 Kelsey Drive, stated that she was not opposed to development, but she believed that it should be appropriate for the community and neighborhood. She opined that the proposed use is a junkyard, and it could become an "attractive nuisance," inviting vandalism and other undesirable activities. Ms. Cruse added that she believed that the subject property could be better developed with a use that would create more jobs.

Kirk Catinna, 1166 Kelsey Drive, stated that he had researched criminal activity around some of the existing Pull-A-Part sites, and he discovered that, in those communities, there was an increase in thefts of cars, which were then sold to Pull-A-Part. In many cases, the cars' owners were not able to retrieve them from the facility before they were dismantled and crushed.

Mr. Catinna stated that the problem appeared to stem from the Pull-A-Part policy of accepting cars to be junked with just a bill of sale, rather than a title. That leaves the company with no means to verify whether or not a car has been stolen. Mr. Catinna opined that the ability to easily sell stolen cars to a facility such as Pull-A-Part could lure career criminals to his neighborhood, placing residents in danger.

Mr. Catinna said, with reference to Mr. Simpson's assertion that the proposed facility could employ as many as 20 people, that, during his research, he had discovered that many of the Pull-A-Part sites around the country employ as few as five individuals. He stated that, although the petitioner contends that they make significant contributions to the communities in which their facilities are located, he does not believe that those contributions are as beneficial as they are made out to be.

Michelle Catinna, 1166 Kelsey Drive, stated that she agreed with Ms. Westover's statements that the proposed Pull-A-Part facility will not make any significant contribution to the economic development of Lexington-Fayette County. Citing a report by the Kentucky Workforce Development Cabinet that projects job and industry growth through 2018, Ms. Catinna said that the report indicated that industries such as junkyards are projected to decline during that time period. She opined that "junkyards are a declining industry, and we do not need to sacrifice 20 acres of land to a facility that could provide as few as five jobs."

Ms. Catinna said, with regard to the petitioner's references to the Louisville Pull-A-Part facility, that that site is completely different from the subject property; it is located on a national turnpike, in an "industrial wasteland." The nearest neighbors to that location are scrapyards, and it is entirely surrounded by heavy industrial uses. Ms. Catinna stated that she believes that locating a Pull-A-Part facility on that site is entirely appropriate, given the surroundings.

Ms. Catinna stated that the Alexandria Drive neighborhoods have "no through trucks" signage, and she was concerned that heavy truck traffic might use that route to reach the subject property. She said she spoke with Jeff Neal, Traffic Engineering, who indicated that the Alexandria Drive access would be open, not only for emergency vehicles, but to all traffic except large trucks. Mr. Neal also indicated in that conversation that there were concerns about the Enterprise Drive access to the subject property, as traffic would have to cross the railroad tracks. Ms. Catinna said that she believed that it was more important to restrict truck traffic through established neighborhoods, rather than

across a railroad line. She added that the reason for the neighborhoods' agreement with the 2007 rezoning of the subject property was the developer's assurance at that time that there would be no access to Alexandria Drive.

Ms. Catinna stated that she also believed that the proposed Pull-A-Part facility would be an "aerial eyesore," as it would be easily visible from airplanes approaching Bluegrass Airport.

Carolyn Rabold, High Point Farm Association, displayed a photograph of the subject property, taken from the entrance to her neighborhood, located across Alexandria Drive. She stated that, since the subject property is much lower than the High Point neighborhood, the proposed fence and berm would not be effective in screening the junked vehicles from view. Ms. Rabold also displayed two photographs taken from the Pull-A-Part website, noting that junked vehicles and crushed cars were easily visible. She asked that the Planning Commission disapprove this request.

Joey Williams, 1155 Kelsey Drive, stated that he had spoken with over 200 of his neighbors, and they all agreed that they do not want the Pull-A-Part facility to locate on the subject property. He asked that the Planning Commission disapprove this request.

Mike Markland, 1298 Viley Road, agreed, as a pilot, that the vehicles stored on the subject property would be easily visible from the air.

Mr. Markland stated that he was concerned about 8,000 – 10,000 cars a year, which could possibly be leaking fluids, being brought in to the facility on wreckers through his neighborhood. He said that there were no restrictions in place to control the volume of additional traffic through the area.

Mr. Markland said that he wished that representatives from Calumet Farm were present to present their opinion on this request, because he "could not imagine a junkyard located next door" to the farm. He opined that Lexington is not Atlanta, Louisville, or Cincinnati; it is a town built around horse farms, and it is too beautiful to allow a junkyard in that area. Mr. Markland asked that the Planning Commission uphold the staff's recommendation of disapproval of this request.

Donald Brown, member of the High Point Farm Association, displayed a map of the Wolf Run watershed, noting the location of the Town Branch Creek. He stated that there were existing stormwater problems in the vicinity of the subject property, and he was concerned about the containment of fluids at the proposed facility. Mr. Brown opined that the community has been attempting to clean up Town Branch for years, and he did not believe that it was worth the risk to allow the Pull-A-Part facility to locate in the watershed.

Trig Bowman, 1621 Parkers Mill Road, was present, but did not speak. However, she did submit written comments, for the record.

Mr. Morgan stated that the staff report on the requested conditional use did not provide sufficient findings for the Commission to recommend approval. He said, with regard to Ms. Plumlee's question, that, if the proposed facility failed to present an adequate stormwater management plan along with the Final Development Plan, it would be too late, because the conditional use permit would already be approved.

Petitioner Rebuttal: Mr. Simpson stated that he did not believe that the crime report data presented was valid, since no officially prepared report to that effect was distributed.

Mr. Simpson said that he understood people's fears of the unknown; but he believed that the Commission appreciated the petitioner's sincerity and the factual basis of their arguments, as well as their commitment to abide by the suggested conditions in order to finally develop the subject property. He stated that the subject property has been included in the Urban Service Area since 1969, and it has been recommended by the Comprehensive Plan for Light Industrial use the entire time. In those 44 years, not a single job has been created on the property. Mr. Simpson said that the petitioner and the property owners believe that locating the Pull-A-Part facility on the subject property will provide an impetus for additional employers to locate there, as well as create approximately \$2 million in tax revenue for the Urban County Government.

Mr. Simpson stated that the subject property has not developed, because many people do not want it to develop. With regard to the citizen comments about Calumet Farm, he said that representatives of the farm have appeared without fail at every Planning Commission meeting where the subject property was discussed, and they were not present at this hearing because they do not object to this request. They indicated to Mr. Simpson that they evaluated the proposal, and found that, with the proposed conditional zoning restrictions, they had no objections.

Mr. Simpson said that the opposing counsel spent all of their time arguing about the rule of law and how it applies to Urban County Governments, but they neglected to mention that there are very few such governments in the state of

* - Denotes date by which Commission must either approve or disapprove request.

Kentucky. He explained that, in order to remove a conditional zoning restriction, a zone change request must be filed and approved by the Planning Commission and the Council. He noted that it would be unlikely for the petitioner to go to all of that trouble to alter the restrictions by which they have made a commitment to abide.

With regard to the opposing counsels' comments about adjudicative facts, Mr. Simpson stated that changes in the law made zone changes different from other decisions, and they are now legislative rather than adjudicative. He opined that those arguments would be more appropriately directed to the courts, rather than to the Planning Commission.

Mr. Simpson said that the community has not sufficiently planned for Heavy Industrial land uses since 2001; there has been no new land recommended for that use since that time. He opined that many of the land uses allowable under the existing I-1 zoning would be less intense than the proposed Pull-A-Part facility. Mr. Simpson stated that no other potential developer of the subject property would agree to eliminate such a large number of potential uses, and he noted that the Planning Commission could revoke those conditional zoning restrictions if the petitioner did not comply with them.

Objectors' Rebuttal: Ms. Westover reiterated that the proposed rezoning does not agree with the Comprehensive Plan, and the petitioner did not present sufficient findings to support their request. She requested that the Commission recommend disapproval of the rezoning and the conditional use permit request.

Staff Rebuttal: Mr. Sallee stated that the staff believed that the property was first recommended for Light Industrial land use in the 1980 Comprehensive Plan.

With regard to Mr. Simpson's assertion that no land had been recommended for Heavy Industrial use, Mr. Sallee stated that some land had been recommended for such a use. He added that the overall amount of industrial land has decreased, but there are still opportunities for development on underutilized Heavy Industrial properties.

Commission Questions: Ms. Beatty asked if any of the land recommended for Heavy Industrial use was currently available. Mr. Sallee answered that he did not believe that any of it was vacant, although the staff does not typically analyze whether or not property is "available." Ms. Beatty asked if there were any other areas zoned for Heavy Industrial use. Mr. Sallee responded that, besides the Old Frankfort Pike corridor, there was Heavy Industrial zoned land in the Avon Rural Activity Center, and a smaller area off of Dove Run Road in the Stone Road area near the Nicholasville Road corridor.

Commission Comments: Ms. Mundy stated that she had been a customer of Pull-A-Part, and she believed that it was a necessary business, but she would not necessarily want it near her residence. She opined that if she lived near an industrial area, however, she would prefer to have a Pull-A-Part facility nearby over a large industrial plant with many employees. Ms. Mundy added that the facility she utilized was neat and well-kept, and the cars were organized.

Mr. Wilson stated that he had visited the Louisville Pull-A-Part site. He said that it was a matter of perspective, but he was impressed with the level of professionalism displayed there.

Mr. Wilson said that he was also concerned with how well-received the Louisville facility was by its nearest neighbors. He discussed the issue with one of the nearby residents, who was also a city councilmember; she indicated that many of her neighbors were initially concerned about the project. A group of concerned Louisville residents traveled to Nashville to view a Pull-A-Part facility there, and they returned with a new assessment. Mr. Wilson stated that, after viewing the facility, he was impressed with the fact that all of the Freon, oil, gasoline and other fluids from the junked vehicles were being recycled, rather than being handled improperly.

Ms. Plumlee stated that, in her opinion, no evidence had been presented that the I-1 zone was inappropriate for the subject property. She said that she believed that "conditional uses could be tarnished," and the subject property should remain zoned I-1. Ms. Plumlee stated that she also believed that the subject property could be used to provide more than one job per acre, and that she was still concerned about the possible environmental impact of the proposed Pull-A-Part facility. She added that she was also concerned about the possibility of a "more offensive" I-2 use locating on the property at some point in the future.

Ms. Blanton stated that she was torn; she was impressed with the petitioner's presentation, believed that Pull-A-Part was a good business, but she was also concerned about the lack of jobs being provided. She said that the neighboring residents need to understand that they live near an industrial area, and they would have concerns about visual impact, truck traffic, and environmental issues no matter what type of industrial use located on the subject property. Ms. Blanton added that traffic was likely to be much worse if the subject property was occupied by a factory running three shifts. She said that, in the end, the issue for her was whether the proposed facility was the best use of the land.

Mr. Penn said that he was concerned that the petitioner was requesting a "one-spot" I-2 zone. He stated that, if the petitioner had wanted to rezone the entire property to I-2, rather than just a parcel, he would not have been nearly as concerned. He added that the property owners need to determine how they intend to use the rest of the property.

Mr. Penn stated that he did not have a problem with the Pull-A-Part facility, but he was not comfortable with putting an I-2 use in an I-1 area.

Mr. Cravens stated that he owned some I-1 property, and he did not understand why the I-1 zone did not allow for this type of use. He opined that inoperable cars should not have to be transported to another county; there should be somewhere in Lexington-Fayette County where they could be processed.

Mr. Cravens said that the subject property has been vacant since 1969, which was a long time for a parcel to remain undeveloped. He added that he believed that "activity breeds activity;" if one I-1 use locates on the property, additional uses will move there as well. For that reason, Mr. Cravens stated that he would support this request.

Ms. Beatty stated that she was concerned about the difference between land use and land development. She added that she believed that the term "junkyard" was "old terminology" that did not apply to the Pull-A-Part facility, which appeared to be more of a "recycling facility." Ms. Beatty opined that the Pull-A-Part use could be a viable recycling option for the community, but it might require a change to the Zoning Ordinance to determine in which zone it should be located.

Ms. Beatty said that it was a delicate balance between understanding the concerns of the nearby residents, and hoping that the subject property will be developed at some point in order to provide additional jobs. She stated that she would like to see more emphasis placed on this type of recycling facility.

Mr. Penn stated that it might be more appropriate to pursue a text amendment to allow the recycling of cars, rather than to rezone a property and limiting the uses via conditional zoning. He opined that he was not comfortable with rezoning a property "just to make something fit."

Ms. Blanton stated that Mr. Penn raised some good points, noting that she, too, was concerned about the "spot-zoning" aspect of this request. She said that there did not seem to be any other options for the petitioner; there was no available I-2 land, and the proposed use did not fit in the I-1 zone. Ms. Blanton stated that any text amendment to include this use would need to be written strictly enough to allow recycling of vehicles, but prohibit traditional-style junkyards.

Mr. Penn said that he believed that the text amendment would be a better venue for addressing this issue. He reiterated that he did not want to see the remainder of the subject property zoned I-2, which could create even more problems for the area residents. Mr. Penn added that text amendments could be more narrowly drawn than zone changes.

Mr. Owens stated that he was on the Board of Adjustment when the petitioner obtained approval for a conditional use permit for the Old Frankfort Pike site that was referenced earlier. He said that he had also been to the Seventh Street site, and he remembered when it was a "true junkyard;" the operators were currently in the process of attempting to make their business more like Pull-A-Part.

Mr. Owens said that he believed that Pull-A-Part was a "viable business that needs to be somewhere," but he had serious concerns about locating it on the subject property. He opined that changing the zoning of the subject parcel could hamper development of the other 21 acres that comprise the subject property with regard to job creation. Mr. Owens stated that people complained for years that the Coldstream business park was vacant, but it was now beginning to thrive. He said that he believed that, as less and less land is available for industrial development, eventually the subject property will be developed.

Mr. Owens stated that he was in support of the staff recommendation of disapproval, because he did not feel that the petitioner had met the burden of proof for any of the reasons allowable for a zone change. He added that he appreciated the concerns of the residents, and he did not have any suggestions for a solution to these issues, but he could not support this request at this time.

Mr. Wilson stated that he intended to make a motion of approval, and he wanted to express his respect for the staff and the neighbors.

Zoning Motion: A motion was made by Mr. Wilson, and seconded by Mr. Cravens, to approve the rezoning for MARC 2013-8, for the following reasons:

* - Denotes date by which Commission must either approve or disapprove request.

1. The applicant's proposed restrictions are similar and less intensive than some of the existing I-2 uses and the use is compatible with some of the uses in the surrounding industrial zones; thus, the use is in substantial conformance with the 2007 Comprehensive Plan.
2. The application is also consistent with the Goals & Objectives of the 2007 and 2012 Comprehensive Plan, encouraging economic development and new employment. This recommendation includes the conditional zoning restrictions listed in Mr. Bruce Simpson's June 27, 2013, letter to Mr. Mike Owens, Planning Commission Chair, outlined as letters "a" through "h."

Zoning Action: Mr. Wilson's motion failed, 3-5 (Cravens, Mundy, and Wilson in favor; Beatty, Blanton, Owens, Penn, and Plumlee opposed; Berkley disqualified; Brewer and Roche-Phillips absent.)

Zoning Action: A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 7-1 (Cravens opposed; Berkley, Brewer, and Roche-Phillips absent) to disapprove MARC 2013-8, for the reasons provided by staff.

Conditional Use Action: A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 7-1 (Cravens opposed; Berkley disqualified; Brewer and Roche-Phillips absent) to disapprove the requested conditional uses, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 7-1 (Cravens opposed; Berkley disqualified; Brewer and Roche-Phillips absent) to indefinitely postpone ZDP 2013-21.

C. FULL PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS

1. **ZOTA 2013-2: HOSPICE FACILITIES IN THE ECONOMIC DEVELOPMENT (ED) ZONE** (11/16/13)* – petition for a Zoning Ordinance text amendment to define "hospice;" add hospice facilities as a principal use; and regulate parking for such uses in the ED zone.

INITIATED BY: Hospice of the Bluegrass

PROPOSED TEXT: Underlined text indicates an addition to the current Zoning Ordinance.

ARTICLE 1-11: DEFINITIONS

HOSPICE – A facility which provides support and care for persons in the last stage of an incurable disease or condition, and to their families. Overnight, in-patient and out-patient facilities may be included, as well as offices, storage, and an associated pharmacy. Medical care, palliative care, counseling and education may be provided.

ARTICLE 23A: EXPANSION AREA ZONING CATEGORIES AND RESTRICTIONS

23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

23A-10(b) PRINCIPAL USES

3. Medical and dental offices, clinics and laboratories, and hospices.

23A-10 (i)

Hospices – One (1) space for every four (4) beds; plus one (1) space for each employee on the maximum working shift, with a minimum of five (5) spaces.

Staff Alternative Text (all other changes remain the same):

23A-10(c) ACCESSORY USES

10. Establishments limited to the filling of prescriptions and retail sale of pharmaceutical and medical supplies with a drive-through window, provided it meets the following conditions:
 - a) Establishments limited to the filling of prescriptions shall be located in a building, the primary use of which is for medical uses; including, but not limited to, hospitals; in-patient treatment facilities; **hospices**; outpatient facilities; surgery centers; medical and dental offices; clinics or laboratories.
 - b) Establishments principally used for the retail sale of pharmaceutical and medical supplies shall be internally oriented to the site (e.g., not located on adjoining arterial streets).
 - c) It shall have no more than one public entrance and one service entrance directly to the outside of the building.

* - Denotes date by which Commission must either approve or disapprove request.

- d) Signage for such establishments may be directly, indirectly or internally illuminated; there shall be no more than one (1) wall-mounted business sign per such establishment, not to exceed thirty-two (32) square feet in area; and no more than one (1) free standing monument type business sign, eight (8) feet in height, with a maximum size of thirty-two (32) square feet.

23A-10 (i)

Hospices – One (1) space for every ~~four (4)~~ **two (2)** beds; plus one (1) space for each employee on the maximum working shift, with a minimum of five (5) spaces.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval of the Staff Alternative Text**, for the following reasons:

1. The text amendment to define a "hospice," create a parking generator and permit the use in the ED zone will expand the opportunities for employment in this area of the Expansion Area.
2. A hospice facility is similar in nature to medical clinics and hospitals, which are currently principal permitted uses in the ED zone; therefore, this is a timely update to the Zoning Ordinance to add such a use in the ED zone.

Staff Presentation: Ms. Wade presented the staff report, noting that this request was filed by Hospice of the Bluegrass to amend the Economic Development (ED) zone. She distributed to the Commission a copy of a letter from Fayette Alliance, in support of this request.

Ms. Wade stated that the petitioner submitted this request in order to define "hospice;" add hospice facilities as a permitted use in the ED zone; and regulate parking in the ED zone. She said that the ED zone was created after the completion of the Expansion Area Master Plan (EAMP) in 1996. The petitioner currently operates in a hospital setting, where they provide medical and palliative care to clients in the final stages of life. The hospice facility, pharmacy, and administrative offices are all currently located at St. Joseph Hospital. The petitioner travels to clients' homes to provide care as well.

Ms. Wade stated that the petitioner currently wishes to construct a standalone facility, in order to better serve clients and their families; they have located available land in the ED zone for that purpose. The ED zone currently permits medical clinics, which are defined in Article 1 of the Zoning Ordinance; but that definition does not permit overnight stays, so the hospice facility could not fall under that definition. Ms. Wade said that the ED zone also permits a regional medical campus, which is defined as "an integrated complex of medical services and providers of at least 50 acres;" the hospice facility does not need 50 acres. In addition, there is a provision in the Ordinance that prohibits a medical campus from being located within 1,000 feet of the Urban Service Area boundary, and the petitioner's property does not meet that spacing requirement.

Ms. Wade stated that the intent of the ED zone is to provide land within the Expansion Area for employment opportunities that are compatible with the overall character and development as suggested in the EAMP. The hospice facility is similar in nature to a hospital, and has historically been permitted as a hospital use. However, the hospice care facility is more similar in scale to medical clinics or office buildings. Ms. Wade said that, therefore, the staff believes it is an appropriate use in the ED zone, and it can meet the intent of the zone.

Ms. Wade stated that the staff is agreeable to the proposed definition of hospice, but they have some concerns about the parking requirement suggested by the petitioner. The petitioner initially suggested one parking space for every four beds, plus one space for each employee on the maximum shift. Ms. Wade said the staff is recommending one space for every two beds, and one space for each employee on the maximum shift. She stated that this parking generator is slightly higher than what is required for hospitals, which the staff believed was appropriate due to the likelihood of a greater number of visitors for clients who are in the final stages of life. The staff is also recommending the inclusion of the word "hospices" in the accessory use related to pharmacies in the ED zone. Ms. Wade explained that pharmacies are only allowed in the ED zone when accessory to a medical clinic or regional medical campus; the staff believed that hospices should be added to that list, so that those facilities could operate their own pharmacy facilities. She said that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, including the proposed staff alternative text.

Mr. Murphy explained that the petitioner has found, through the development of their facility in Hazard, that standalone facilities are preferred by patients, their families, and staff. He said that, when the ED zone was drafted years ago, this type of use was likely unanticipated, and this addition to the Zoning Ordinance will allow more flexibility for the zone.

Citizen Comments: There were no citizens present to comment on this request.

* - Denotes date by which Commission must either approve or disapprove request.

Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 8-0 (Berkley, Brewer, and Roche-Phillips absent) to approve ZOTA 2013-2, for the reasons provided by staff.

2. **ZOTA 2013-3: MOBILE FOOD UNIT VENDORS AS ACCESSORY USES IN THE WAREHOUSE BUSINESS, INDUSTRIAL, AND ECONOMIC DEVELOPMENT ZONES** (7/14/13)* – petition for a Zoning Ordinance text amendment to permit mobile food unit vendors as accessory uses in the Wholesale & Warehouse Business (B-4), Light Industrial and Heavy Industrial (I-1 and I-2), and Economic Development (ED) zones.

INITIATED BY: Urban County Council

PROPOSED TEXT: Underlined text indicates an addition to the current Zoning Ordinance.

ARTICLE 8: SCHEDULE OF ZONES

8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21 (c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

9. Facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Ordinance #17-2013 are met.

8-22 LIGHT INDUSTRIAL (I-1) ZONE

8-22 (c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

4. Facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Ordinance #17-2013 are met.

Note: This change would automatically carry over to the Heavy Industrial (I-2) zone and the Office, Industry and Research Park (P-2) zone.

ARTICLE 23A: EXPANSION AREA ZONING CATEGORIES AND RESTRICTIONS

23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

23A-10(c) ACCESSORY USES

13. For premises not permitted under 23A(1)(c)(12) above, facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Ordinance #17-2013 are met.

Re-number remaining sections as necessary

Alternative Text: Underlined text indicates an addition to the current Zoning Ordinance.

ARTICLE 8: SCHEDULE OF ZONES

8-21 WHOLESALE AND WAREHOUSE BUSINESS (B-4) ZONE

8-21 (c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

9. Facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Ordinance #17-2013 Section 15-11 of the Code of Ordinances are met.

8-22 LIGHT INDUSTRIAL (I-1) ZONE

* - Denotes date by which Commission must either approve or disapprove request.

8-22 (c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

4. Facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Ordinance #17-2013 Section 15-11 of the Code of Ordinances are met.

ARTICLE 23A: EXPANSION AREA ZONING CATEGORIES AND RESTRICTIONS

23A-10 ECONOMIC DEVELOPMENT (ED) ZONE

23A-10(c) ACCESSORY USES

13. For premises not permitted under 23A(1)(c)(12) above, facilities for serving food only for employees and visitors; having no direct access to the exterior, and having no signs visible from the exterior of the building. Mobile food unit vendors may also serve this purpose, and be parked outside of a building to serve employees and visitors, provided that the requirements of Ordinance #17-2013 Section 15-11 of the Code of Ordinances are met.

Re-number remaining sections as necessary

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The text amendment to Articles 8 and 23A will permit food service as an accessory use either within a structure or by a mobile food unit vendor in the Wholesale and Warehouse Business (B-4); Light Industrial (I-1); Heavy Industrial (I-2); Office, Industry and Research Park (P-2); and Economic Development (ED) zones, which are many of the community's employment-generating zones.
2. The amendment will permit additional options for businesses and employees within warehouse/wholesale and industrial business areas with minimal impact and will avoid incompatible land use decisions that have been suggested for these areas of the community in the past.

Staff Presentation: Ms. Wade stated that this text amendment was initiated by the Urban County Council earlier in 2013 to allow mobile food unit vendors (aka "food trucks") as an accessory use in the B-4; I-1 and I-2; P-2; and ED zones. The impetus for this request was to permit food trucks more widely in the community. Currently, mobile food unit vendors are permitted in any zone where a restaurant is first permitted; but they are not explicitly permitted, even as an accessory use, in the Industrial and Warehouse Business zones. The current Ordinance does permit the ability to have an accessory food service in the I-1 zone. This proposal would expand that to allow a food truck to locate on the property to provide food for employees and visitors.

Ms. Wade stated that, in reviewing this request, the staff found that there are several areas in the community that are comprised primarily of Industrial and Warehouse Business uses that could benefit from this text change. The staff believes that the proposed text amendment will present additional options for employees and visitors of those businesses with minimal impact, while avoiding potentially incompatible land use decisions that have been suggested for industrial areas in the past.

Ms. Wade said that the staff did suggest one change to the Council's proposal. The staff recommends that these sections refer to the Code of Ordinances, rather than the ordinance number. She stated that the staff and the Zoning Committee recommended approval of this request.

Before closing, Ms. Wade displayed for the Commission a map of the county where mobile food units would be permitted by right and as accessory uses under the proposed text amendment.

Citizen Comments: There were no citizens present to speak to this request.

Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 8-0 (Berkley, Brewer, and Roche-Phillips absent) to approve ZOTA 2013-3, for the reasons provided by staff.

VI. COMMISSION ITEMS

- A. **TIF REPORT – STATEMENT OF COMPLIANCE WITH COMPREHENSIVE PLAN** – Proposed Bayer Properties' Development of "The Summit: Lexington" Development Plan, located at 4100 Nicholasville Road and 104, 108 and 112 East Tiverton Way.

* - Denotes date by which Commission must either approve or disapprove request.

Staff Presentation: Ms. Rackers presented the staff report, stating that the applicant is requesting a Mixed-Use Redevelopment TIF, which has specialized qualification requirements: the project must have a positive economic and fiscal impact to the Commonwealth; the footprint cannot contain any one retail establishment that exceeds 20,000 square feet of finished square footage; the project must meet the minimum capital investment of \$20 million; the development area must be less than a maximum of three square miles; the project must include at least two of the following uses: retail, residential, office, restaurant, or hospitality; and it must be located in an area with blighted conditions and inadequate public infrastructure, or it must be a mixed-use development that includes either or both significant public stormwater and sanitary sewer facilities that are designed to comply with a community-wide court decree mandating corrective action by a local government or an agency thereof.

Ms. Rackers explained that the TIF is a mechanism for financing public improvements within a development area, including roads, utilities, sanitary and storm sewers, and other public improvements. Once the property is developed, its value increases, and a percentage of the increased tax revenues provides a mechanism for paying for the improvements. One part of the process is Planning Commission review with regard to compliance with the Comprehensive Plan. The staff will forward the Commission's recommendation to the Urban County Council, who will hold a public hearing on the matter. If the Council approves the project, it will be reviewed by the State Economic Development Cabinet. If the project is approved at that level, the State and LFUCG will enter into a formal agreement to implement the TIF.

Ms. Rackers stated that this proposed TIF has been reviewed relative to the 2007 Comprehensive Plan and the South Nicholasville Road Small Area Plan, which was an adopted element of the 2007 Plan. There are several public improvements that are eligible for the TIF: transportation corridor expansion; improved access to the property from Nicholasville Road and Man o' War Boulevard; storm sewer improvements; sanitary sewer improvements; utility provision, modification, and burial; access roads and street lighting; curbs and sidewalks; new parking (structure and surface spaces); public spaces and parks; land preparation and demolition; and geotechnical services, environmental remediation, and other contingencies.

Ms. Rackers said that there are several elements of the Comprehensive Plan, including the Mission Statement and the vision for Lexington, that speak to the improvements proposed as part of this project. The Mission Statement and the vision supply the basis for land use decisions and development in Lexington-Fayette County. Ms. Rackers read the following excerpt from the Comprehensive Plan:

"The mission of planning efforts is to provide a vision for physical development that will allow Lexington to grow and prosper, and that will promote economic and viable job development."

She said that the proposed TIF development area has been designed to implement that vision, and that there are six Themes contained in the Vision that apply to this proposal.

Ms. Rackers stated that, during the 2007 Comprehensive Plan process, there were several areas that were identified for further study and evaluation, with a recommendation that Small Area Plans be completed for those areas. One of those plans was the South Nicholasville Road Small Area Plan, which consists of an area between East Tiverton Way and the Fayette County line. The study area was divided into sub-areas; the subject property comprises nearly ½ of Sub-area 4. One of the recommendations for Sub-area 4 was that 4100 Nicholasville Road be developed as an urban village-style mixed-use development, with residential, commercial, and mixed uses. The petitioner is currently proposing a mix of residential, retail, restaurant, and hotel uses.

Ms. Rackers said that there are several Goals and Objectives of the 2007 Comprehensive Plan that support the proposed TIF project, all of which were listed in the staff report. She stated that ten of the land use principles that were used to formulate the Plan, which were incorporated into the SAP, apply to this project; those were listed in the staff report as well. One paragraph in the Infill & Redevelopment portion of the Plan particularly applies to the proposed development:

"There is substantial literature on best practice methods for infill and redevelopment, and densification. The local challenges lie in addressing inadequate infrastructure, including storm and sanitary sewers, and roads and open space, as well as the adequacy of public schools. Neighborhood residents and historic preservationist officials have expressed concern about the design, use, and density of new construction, and the compatibility with existing conditions in developed areas."

Ms. Rackers noted that, prior to the completion of the SAP, the Comprehensive Plan recommended Medium Density and High Density Residential for the subject property. The Mixed-Use category recommended by the SAP encourages a mix of professional office and retail or other commercial uses, with a residential component. Ms. Rackers noted that the three small parcels on East Tiverton Way are still recommended for High Density Residential use. Three of the recommendations for the SAP Sub-area 4 particularly apply to this project: 1) the implementation of a stormwater study for 4100 Nicholasville Road and the properties surrounding it; 2) the construction of residential-only structures as a buffer to existing residential uses; and 3) to place non-residential structures at the intersection of Nicholasville Road and Man o' War Boulevard, and along Nicholasville Road, to buffer noise.

Ms. Rackers stated that the subject property is largely undeveloped, with the exception of the Fritz family home and accessory structures, and the small garden center and mulch business. The SAP noted that this is the largest parcel within Sub-area 4; and, with a high level of traffic on both Man o' War Boulevard and Nicholasville Road, it has been and continues to be attractive to commercial development.

Ms. Rackers said that, as part of the certification process for the requested TIF, any recommendations with regard to rezoning, text amendments, or other changes needed to accommodate the development plan need to be included with the recommendations to the Council. The requested zone change to MU-3 was deemed to be necessary; without it, the property cannot be redeveloped, particularly in accordance with the SAP recommendations. The zone change must be approved by the Urban County Council, and the development plan certified, prior to the issuance of any permits for improvements to the property. Ms. Rackers noted that there are no FEMA floodplain or environmentally sensitive areas on the subject property; but there are some concerns about the depth to bedrock, which would provide some development challenges that will have to be addressed in the process. Flooding has occurred on the property in the past, but those issues will likely be mitigated with the improvements to the property.

Ms. Rackers said that the vision for Lexington-Fayette County states that,

"The built areas of Lexington are a collection of diverse neighborhoods. Each neighborhood has a unique identity; and, together, they form the building blocks of the entire community. It's through these neighborhoods that we experience an uncommon quality of life. The challenge of our planning efforts is to sustain the pattern of development to preserve the quality of life and to allow for the redevelopment of the built environment."

The staff believes that the creation of the TIF development area and the implementation of the proposed project fit this vision; and they will help to implement the SAP, as well as the 2007 Comprehensive Plan. Ms. Rackers noted that the sanitary and storm sewer systems will be designed to comply with the EPA Consent Decree.

Action: A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 9-0 (Brewer and Roche-Phillips absent) to forward the TIF request to Council, noting that it is in compliance with the Comprehensive Plan.

- B. RESOLUTION TO AMEND THE OFFICIAL FILING REQUIREMENTS** – Mr. King stated that, in order to align the Commission's requirements with the new digital plan submittal policy, the staff was requesting that the Commission to consider the adoption of a resolution to require the digital submissions as part of all subdivision and development plan filings. He explained that passage of that resolution would ensure that all involved parties were officially notified of the new process. Mr. King said that the staff had worked on the digital submittal process for the past couple of months; it was then fully vetted by members of the Technical Committee and the development community.

Commission Questions: Ms. Beatty asked when the resolution would become effective. Mr. King answered that the resolution would be effective upon the Commission's passage, and the digital submittal program would be implemented on July 1st.

Ms. Blanton asked if the digital submittal requirement would reduce the number of paper copies required with plan submittals. Mr. King answered that not all of the Technical Committee members have the ability to review digital plans at this time, but the eventual goal is to reduce the paper requirements.

Action: A motion was made by Ms. Blanton, seconded by Mr. Wilson, and carried 8-0 (Berkley, Brewer, and Roche-Phillips absent) to pass the resolution to amend the official filing requirements, as recommended by staff.

- C. NOMINATING COMMITTEE REPORT** – Mr. Owens stated that Ms. Plumlee and Mr. Wilson had been reappointed by the Mayor to serve another term on the Planning Commission. Ms. Roche-Phillips was not reappointed, however; so, a recommendation for the position of Secretary was needed from the Commission's Nominating Committee.

Mr. Penn stated that the Nominating Committee would recommend that Ms. Blanton serve as Secretary of the Planning Commission. Mr. Owens noted that the vote would take place at their first meeting in July. There was no Commission discussion.

- D. CLOSED SESSION** – Mr. King stated that the Department of Law had requested that the Commission convene in closed session to discuss a matter of pending litigation.

Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 8-0 (Berkley, Brewer, and Roche-Phillips absent) to convene in closed session to discuss a matter of pending litigation at 8:57 p.m. The Commission returned to open session at 9:00 p.m., with the same members in attendance.

Action: A motion was made by Mr. Penn, seconded by Ms. Plumlee, and carried 8-0 (Cravens abstained; Berkley, Brewer, and Roche-Phillips absent) to authorize the Department of Law and the Board of Adjustment to initiate injunctive relief against the property at 8291 Old Richmond Road.

* - Denotes date by which Commission must either approve or disapprove request.

VII. **STAFF ITEMS** – No such items were presented.

VIII. **AUDIENCE ITEMS** – No such items were presented.

IX. **MEETING DATES FOR JULY, 2013**

Subdivision Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	July 3, 2013
Zoning Committee, Wednesday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	July 3, 2013
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	July 11, 2013
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	July 18, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	July 24, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	July 25, 2013

X. **ADJOURNMENT** – There being no further business, Chairman Owens declared the meeting adjourned at 9:03 p.m.

TLW/TM/CT/BJR/BS/src

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